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COMPULSORY JURISDICTION, INTERNATIONAL COURT OF JUSTICE

HEARINGS

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS

UNITED STATES SENATE

EIGHTY-SIXTH CONGRESS
SECOND SESSION
ON

S. Res. 94

A RESOLUTION TO AMEND S. RES. 196, 79TH CONGRESS,
2D SESSION, RELATING TO THE RECOGNITION OF THE
JURISDICTION OF THE INTERNATIONAL COURT
OF JUSTICE IN CERTAIN LEGAL DISPUTES

JANUARY 27 AND FEBRUARY 17, 1960

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COMPULSORY JURISDICTION, INTERNATIONAL COURT OF JUSTICE

WEDNESDAY, JANUARY 27, 1960

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The committee met, pursuant to call, at 10 a.m., in the committee room, room 4221, New Senate Office Building, Senator J. W. Fulbright (chairman) presiding.

Present: Senators Fulbright, Green, Sparkman, Mansfield, Lausche, Wiley, Hickenlooper, and Aiken.

The CHAIRMAN. The committee will come to order.

The committee is meeting today to consider Senate Resolution 94, which would delete the so-called Connally amendment from the 1946 resolution authorizing U.S. acceptance of the compulsory jurisdiction provisions (art. 36, par. 2) of the Statute of the International Court of Justice under certain conditions.

The Connally amendment inserted into the resolution of ratification the words "as determined by the United States." This has the effect of reserving to the United States the right to decide for itself whether or not a dispute before the Court to which it is a party involves a matter essentially within its domestic jurisdiction. Without the Connally amendment, questions of whether a particular issue before the Court might be essentially within the domestic jurisdiction of a State would be "settled by the decision of the Court" in accordance with article 36, paragraph 6, of the Statute.

As the pending measure is an advice and consent resolution, approval would require a two-thirds vote of the Senators present and voting.

Although the resolution now before the committee has been pending since March 24, 1959, only within the past few weeks have there been more than a half dozen requests to testify. When hearings were scheduled for today, it was anticipated that by meeting both morning and afternoon, we would be able to hear all parties indicating an interest in the legislation. Within the last few days, however, a large number of requests to testify have been received, and I expect it may be necessary to schedule additional hearings. I take this occasion to announce that, subject, of course, to the wishes of the committee.

At this point I believe it would be helpful to insert in the record of the hearings the text of Senate Resolution 94, an excerpt from the President's State of the Union message on January 7, an address made by Vice President Nixon on April 13, 1959, and the reports of the Departments of State and Justice on the resolution.

(The documents referred to are as follows:)

[S. Res. 94, 86th Cong., 1st sess.¹]

RESOLUTION

Resolved (two-thirds of the Senators present concurring therein), That S. Res. 196 of the Seventy-ninth Congress, second session, agreed to August 2, 1946, is hereby amended to read as follows:

"Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the deposit by the President of the United States with the Secretary General of the United Nations, of a declaration under paragraph 2 of article 36 of the Statute of the International Court of Justice recognizing as compulsory, ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes hereafter arising concerning—

- "a. the interpretation of a treaty;*
- "b. any question of international law;*
- "c. the existence of any fact which, if established, would constitute a breach of an international obligation;*
- "d. the nature or extent of the reparation to be made for the breach of an international obligation.*

Provided, That such declaration shall not apply to—

"a. disputes the solution of which the parties shall entrust the other tribunals by virtue of agreements already in existence or which may be concluded in the future; or

"b. disputes with regard to matters which are essentially within the domestic jurisdiction of the United States; or

"c. disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States specially agrees to jurisdiction.

Provided further, That such declaration shall remain in force until the expiration of six months after notice may be given to terminate the declaration."

EXCERPT FROM THE PRESIDENT'S STATE OF THE UNION MESSAGE, JANUARY 7, 1960

There is one other subject concerning which I renew a recommendation I made in my state of the Union message last January. I then advised the Congress of my purpose to intensify our efforts to replace force with a rule of law among nations. From many discussions abroad, I am convinced that purpose is widely and deeply shared by other peoples and nations of the world.

In the same message, I stated that our efforts would include a reexamination of our own relation to the International Court of Justice. The Court was established by the United Nations to decide international legal disputes between nations. In 1946 we accepted the Court's jurisdiction, but subject to a reservation of the right to determine unilaterally whether a matter lies essentially within domestic jurisdiction. There is pending before the Senate a resolution which would repeal our present self-judging reservation. I support that resolution and urge its prompt passage. If this is done, I intend to urge similar acceptance of the Court's jurisdiction by every member of the United Nations.

TEXT OF ADDRESS BY THE VICE PRESIDENT OF THE UNITED STATES BEFORE THE ACADEMY OF POLITICAL SCIENCE, NEW YORK, N.Y., APRIL 13, 1959

An invitation to address this distinguished audience is one of the most flattering and challenging a man in my position could receive.

Flattering because the very name of this organization at least implies that the profession which I am proud to represent can properly be described as a science rather than by some of the far less complimentary terms usually reserved for politics and politicians.

¹ Introduced by Senator Humphrey on Mar. 24, 1959. On Apr. 30 and June 17, 1959, respectively, Senators Javits and Kefauver became cosponsors.

And challenging because I realize that an Academy of Political Science expects a speech of academic character. I hasten to add, however, if it is proper to quote a Princeton man at a Columbia gathering, that in using the term academic I share Woodrow Wilson's disapproval of the usual connotation attached to that word. Speaking on December 28, 1918, in London's Guildhall he said: "When this war began a league of nations was thought of as one of those things that it was right to characterize by a name which, as a university man, I have always resented. It was said to be academic, as if that in itself were a condemnation, something that men could think about but never get."

In my view, the primary function of the practicing politician and of the political scientist is to find ways and means for people to get those things they think about; to make the impractical practical; to push idealism into action.

It is in that spirit, that I ask you to analyze with me tonight the most difficult problem confronting our society today. It is, as I am sure we will all agree, the simple but overriding question of the survival of our civilization. Because while none of us would downgrade the importance of such challenging problems as the control of inflation, economic growth, civil rights, urban redevelopment—we all know that the most perfect solutions of any of our domestic problems will make no difference at all if we are not around to enjoy them.

Perhaps at no time in the course of history have so many people been so sorely troubled by the times and dismayed by the prospects of the future. The almost unbelievably destructive power of modern weapons should be enough to raise grave doubts as to mankind's ability to survive even were we living in a world in which traditional patterns of international conduct were being followed by the major nations. But the threat to our survival is frighteningly multiplied when we take into account the fact that these weapons are in the hands of the unpredictable leaders of the Communist world as well as those of the free world.

What is the way out of this 20th century human dilemma? For the immediate threat posed by the provocative Soviet tactics in Berlin, I believe that to avoid the ultimate disaster of atomic war on one hand, or the slow death of surrender on the other, we must continue steadfastly on the course now pursued by the President and the Secretary of State.

In the record of American policy, as it has unfolded since the time of Korea, our national resolves to stand firm against communist aggression are clearly revealed. This has particularly been the case since the policy of containment matured into the policy of deterrence. In the recurrent post-Korean crisis of the Formosa Straits, the Middle East, and now Berlin, the President, and Mr. Dulles have given the Soviet leaders no possible cause to misconstrue the American intent.

I believe moreover that the Soviet leaders are equally on notice that regardless of which political party holds power in Washington these policies of resolute adherence to our principles, our commitments and our obligations will prevail. I specifically want to pay tribute to members of the Democratic Party in the Congress for putting statesmanship above partisanship by making this clearly evident in the developing situation of Berlin.

We can also take confidence in the fact that at this moment the United States possesses military power fully adequate to sustain its policies, and I am certain that whatever is necessary to keep this balance in favor of the free nations and the ideals of freedom will be done, by this administration and by its successors regardless of which political party may be in power.

What this posture of resolute national unity taken alone must mean in the end, however, is simply an indefinite preservation of the balance of terror.

We all recognize that this is not enough. Even though our dedication to strength will reduce sharply the chances of war by deliberate overt act, as long as the rule of force retains its paramount position as the final arbiter of international disputes, there will ever remain the possibility of war by miscalculation. If this sword of annihilation is ever to be removed from its precarious balance over the head of all mankind, some more positive courses of action than massive military deterrence must somehow be found.

It is an understandable temptation for public men to suggest that some bold new program will resolve the human dilemma—that more missiles, more aid, more trade, more exchange, or more meetings at the summit will magically solve the world's difficulties.

The proposals that I will suggest tonight are not offered as a panacea for the world's ills. In fact, the practice of suggesting that any one program, whatever its merit, can automatically solve the world's problems is not only unrealistic

but, considering the kind of opponent who faces us across the world today, actually can do more harm than good in that it tends to minimize the scope and gravity of the problems with which we are confronted, by suggesting that there may be one easy answer.

But while there is no simple solution for the problems we face, we must constantly search for new practical alternatives to the use of force as a means of settling disputes between nations.

Men face essentially similar problems of disagreement and resort to force in their personal and community lives as nations now do in the divided world. And, historically, man has found only one effective way to cope with this aspect of human nature—the rule of law.

More and more the leaders of the West have come to the conclusion that the rule of law must somehow be established to provide a way of settling disputes among nations as it does among individuals. But the trouble has been that as yet we have been unable to find practical methods of implementing this idea. Is this one of these things that men can think about but cannot get?

Let us see what a man who had one of the most brilliant political and legal minds in the Nation's history had to say in this regard. Commenting on some of the problems of international organization the late Senator Robert Taft said: "I do not see how we can hope to secure permanent peace in the world except by establishing law between nations and equal justice under law. It may be a long hard course, but I believe that the public opinion of the world can be led along that course, so that the time will come when that public opinion will support the decision of any reasonable impartial tribunal based on justice."

We can also be encouraged by developments that have occurred in this field in just the past 2 years.

Not surprisingly the movement to advance the rule of law has gained most of its momentum among lawyers. Mr. Charles Rhyne, a recent president of the American Bar Association, declared in a speech to a group of associates in Boston a few weeks ago that there is an idea on the march in the world. He was referring to the idea that ultimately the rule of law must replace the balance of terror as the paramount factor in the affairs of men.

At the time of the grand meeting of the American Bar Association in London in July 1957, speaker after speaker at this meeting—the Chief Justice of the United States, the Lord Chancellor of Great Britain, the Attorney General of the United States, and Sir Winston Churchill—eloquently testified that the law must be made paramount in world affairs.

An adviser to the President, Mr. Arthur Larson, left the White House staff to establish a world rule of law center at Duke University.

One hundred and eighty-five representatives of the legal professions of many nations of earth met in New Delhi last January and agreed that there are basic universal principles on which lawyers of the free world can agree.

A year ago, through the activity of the bar association and by proclamation of the President, May 1—the Communist May Day—became Law Day in the United States. The bar association stimulated more than 20,000 meetings over the country on the first Law Day. In a few weeks, this tribute to an advancing idea will be repeated on a far greater scale.

President Eisenhower, you will recall, said in his state of the Union message last January: "It is my purpose to intensify efforts during the coming 2 years * * * to the end that the rule of law may replace the obsolete rule of force in the affairs of nations. Measures toward this end will be proposed later, including reexamination of our relation to the International Court of Justice."

I am now convinced, and in this I reflect the steadfast purpose of the President, and the wholehearted support of the Secretary of State and the Attorney General, that the time has now come to take the initiative in the direction of establishment of the rule of law in the world to replace the rule of force.

Under the Charter of the United Nations and the Statute of the International Court of Justice, institutions for the peaceful composing of differences among nations and for law giving exist in the international community. Our primary problem today is not the creation of new international institutions, but the fuller and more fruitful use of the institutions we already possess.

The International Court of Justice is a case in point. Its relative lack of judicial business—in its 12-year history an average of only two cases a year have come before the tribunal of 15 outstanding international jurists—underlines the untapped potentialities of this Court. While it would be foolish to suppose that litigation before the Court is the answer to all the world's problems, this method

of settling disputes could profitably be employed in a wider range of cases than is presently done.

As the President indicated in his state of the Union message, it is time for the United States to reexamine its own position with regard to the Court. Clearly all disputes regarding domestic matters must remain permanently within the jurisdiction of our own courts. Only matters which are essentially international in character should be referred to the International Court. But the United States reserved the right to determine unilaterally whether the subject matter of a particular dispute is within the domestic jurisdiction of the United States and is therefore excluded from the jurisdiction of the Court. As a result of this position on our part, other nations have adopted similar reservations. This is one of the major reasons for the lack of judicial business before the Court.

To remedy this situation the administration will shortly submit to the Congress recommendations for modifying this reservation. It is our hope that by our taking the initiative in this way, other countries may be persuaded to accept and agree to a wider jurisdiction of the International Court.

There is one class of disputes between nations which, in the past, has been one of the primary causes of war. These economic disputes assume major importance today at a time when the cold war may be shifting its major front from politics and ideology to the so-called rubble war for the trade and the development of new and neutral countries.

As far as international trade is concerned, an imposing structure of international agreements already exists. More complex and urgent than trade, as such, is the area of international investment. For in this area will be determined one of the most burning issues of our times—whether the economic development of new nations, so essential to their growth in political self-confidence and successful self-government, will be accomplished peacefully or violently, swiftly or wastefully, in freedom or in regimentation and terror.

We must begin by recognizing that the task of providing the necessary capital for investment in underdeveloped countries is a job too big for mere Government money. Only private money, privately managed, can do it right in many sectors of needed development. And private investment requires a sound and reliable framework of laws in which to work.

Economic development, involving as it does so many lawyers and so many private investors, will tend to spread and promote more civilized legal systems wherever it goes. Already, in its effort to encourage U.S. private investment abroad, the U.S. Government has negotiated treaties of commerce with 17 nations since 1946, tax conventions with 21 nations, and special investment guarantee agreements under the Mutual Security Act with 40 nations. A host of other special arrangements are in effect, such as those under which we have helped six nations draft better domestic legislation relating to foreign investment.

What has been done is for the most part good but there are several areas where additional action is called for. The countries that need economic development most are too often least likely to have the kind of laws, government, and climate that will attract investment. The political risks of expropriation and inconvertibility against which ICA presently sells insurance are not the only political risks that investors fear. Three U.S. Government commissions, as well as numerous private experts, have recently recommended a variety of improvements in our machinery for fostering foreign investment.

I select three for particular endorsement. Our laws should permit the establishment of Foreign Business Corporations meriting special tax treatment, so that their foreign earnings can be reinvested abroad free of U.S. tax until the U.S. investor actually receives his reward. In addition, more tax treaties should be speedily negotiated to permit tax sparing and other reciprocal encouragements to investors. The ICA guarantee program should be extended to include such risks as revolution and civil strife. Finally, a concerted effort should be made to extend our whole treaty and guarantee system into more countries, especially those in most need of development.

The great adventure of economic development through a worldwide expansion of private investment is bound to develop many new forms and channels of co-operation between governments and between individuals of different nations.

We need not fear this adventure; indeed we should welcome it. For if it sufficiently engages the imagination and public spirit of the legal profession and others who influence public opinion, it must be accompanied by the discovery or rediscovery, in countries old and new, of the legal principles and the respect for substantive law on which wealth and freedom alike are grounded.

There are encouraging signs at least that we are on the threshold of real progress toward creating more effective international law for the settlement of economic disputes between individuals and between nations.

Turning to the political area, we have now come far enough along in the great historic conflict between the free nations and the Communist bloc to know that negotiation and discussion alone will not necessarily resolve the fundamental issues between us. This has proved to be the case whether the negotiations took place through the very helpful processes of the United Nations, or at the conference table of foreign ministers, or even at what we now call the summit.

What emerges, eventually, from these meetings at the conference table are agreements. We have made a great many agreements with the Soviet leaders from the time of Yalta and Potsdam. A major missing element in our agreements with the Soviet leaders has been any provision as to how disputes about the meaning of the agreements in connection with their implementation could be decided.

Looking back at the first summit conference at Geneva, for example, we find that it produced an agreement, signed by the Soviet leaders, which elevated the hopes of the entire world.

It should be noted, however, that the President and the Secretary of State repeatedly warned both before and after the holding of the conference that success could be measured only in deeds. One of the announced purposes of the conference was to test the Soviet sincerity by the standard of performance.

The summit conference has since been characterized by some as a failure, but in terms of agreements, as such, it was a success.

Let me quote briefly from that agreement: "The heads of government, recognizing their common responsibility for the settlement of the German question and the reunification of Germany, have agreed that the settlement of the German question and the reunification of Germany by means of free elections shall be carried out in conformity with the national interests of the German people and the interests of European security."

In other words, those who participated in the conference, including Mr. Khrushchev, agreed at Geneva on a sound method for dealing with the German problem—the very same problem from which he has now fathered the new crisis at Berlin. But while the agreement seemed clear, as events subsequently developed, Mr. Khrushchev's understanding of its meaning was ostensibly different from ours.

The crucial question remained—how was the agreement to be effective when the parties disagreed as to what it meant? This is typical of a problem that can arise wherever any agreement is entered into between nations.

In looking to the future what practical steps can we take to meet this problem? I will not even suggest to you that there is any simple answer to this question. For obviously there can be none. But I do believe there is a significant step we can take toward finding an answer.

We should take the initiative in urging that in future agreements provisions be included to the effect (1) that disputes which may arise as to the interpretation of the agreement should be submitted to the International Court of Justice at The Hague; and (2) that the nations signing the agreement should be bound by the decision of the Court in such cases.

Such provisions will, of course, still leave us with many formidable questions involving our relationships with the Communist nations in those cases where they ignore an agreement completely apart from its interpretation. But I believe this would be a major step forward in developing a rule of law for the settlement of political disputes between nations and in the direction all freemen hope to pursue. If there is no provision for settling disputes as to what an international agreement means and one nation is acting in bad faith, the agreement has relatively little significance. In the absence of such a provision an agreement can be flagrantly nullified by a nation acting in bad faith whenever it determines it is convenient to do so.

While this proposal has not yet been adopted as the official U.S. position, I have discussed it at length with Attorney General Rogers and with officials of the State Department and on the basis of these discussions I am convinced that it has merit and should be given serious consideration in the future.

The International Court of Justice is not a Western instrumentality. It is a duly constituted body under the United Nations Charter and has been recognized and established by the Soviet Union along with the other signatories to the charter.

There is no valid reason why the Soviets should not be willing to join with the nations of the free world in taking this step in the direction of submitting differences with regard to interpretation of agreements between nations to a duly established international court and thereby further the day when the rule of law will become a reality in the relations between nations.

And, on our part, as Secretary Dulles said in his speech before the New York State Bar Association on January 31: "Those nations which do have common standards should, by their conduct and example, advance the rule of law by submitting their disputes to the International Court of Justice, or to some other international tribunal upon which they agree."

We should be prepared to show the world by our example that the rule of law, even in the most trying circumstances, is the one system which all freemen of good will must support.

In this connection it should be noted that at the present time in our own country our system of law and justice has come under special scrutiny, as it often has before in periods when we have been engaged in working out basic social relationships through due process of law. It is certainly proper for any of us to disagree with an opinion of a court or courts. But all Americans owe it to the most fundamental propositions of our way of life to take the greatest care in making certain that our criticisms of court decisions do not become attacks on the institution of the court itself.

Mr. Khrushchev has proclaimed time and again that he and his associates in the Kremlin, to say nothing of the Soviet peoples, desire only a fair competition to test which system, communism or free capitalism, can better meet the legitimate aspirations of mankind for a rising standard of living.

Perhaps it is significant that the leaders of the free world do not feel obliged to so proclaim so often. The world knows that this is the only kind of competition which the free nations desire. It is axiomatic that free people do not go to war except in defense of freedom. So obviously we welcome this kind of talk from Mr. Khrushchev. We welcome a peaceful competition with the Communists to determine who can do the most for mankind.

Mr. Khrushchev also knows, as we do, that a competition is not likely to remain peaceful unless both sides understand the rules and are willing to have them fairly enforced by an impartial umpire. He has pointedly reminded the world that Soviet troops are not in Germany to play skittles. The free peoples passionately wish that Mr. Khrushchev's troops, as well as their own, could find it possible to play more skittles and less atomic war games. But we remind him that his troops could not even play skittles without rules of the game.

If the Soviets mean this talk of peaceful competition, then they have nothing to fear from the impartial rules impartially judged which will make such peaceful competition possible.

The Soviet leaders claim to be acutely aware of the lessons of history. They are constantly quoting the past to prove their contention that communism is the wave of the future. May I call to their attention one striking conclusion that is found in every page of recorded history. It is this: the advance of civilization, the growth of culture, and the perfection of all the finest qualities of mankind have all been accompanied by respect for law and justice and by the constant growth of the use of law in place of force.

The barbarian, the outlaw, the bandit are symbols of a civilization that is either primitive or decadent. As men grow in wisdom, they recognize that might does not make right; that true liberty is freedom under law; and that the arrogance of power is a pitiful substitute for justice and equity.

Hence once again we say to those in the Kremlin who boast of the superiority of their system: Let us compete in peace, and let our course of action be such that the choice we offer uncommitted peoples is not a choice between progress and reaction, between high civilization and a return to barbarism, between the rule of law and the rule of force.

In a context of justice, of concern for the millions of men and women who yearn for peace, of a constant striving to bring the wealth abounding in this earth to those who today languish in hunger and want—in such a context, competition between the Communist world and the free world would indeed be meaningful. Then we could say without hesitation: Let the stronger system win, knowing that both systems would be moving in a direction of a world of peace, with increasing material prosperity serving as a foundation for a flowering of the human spirit.

We could then put aside the hatred and distrust of the past and work for a better world. Our goal will be peace. Our instrument for achieving peace will be law and justice. Our hope will be that, under these conditions, the vast energies now devoted to weapons of war will instead be used to clothe, house, and feed the entire world. This is the only goal worthy of our aspirations. Competing in this way, nobody will lose, and mankind will gain.

DEPARTMENT OF STATE REPORT ON SENATE RESOLUTION 94

DEPARTMENT OF STATE,
Washington, April 30, 1959.

HON. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations,
U.S. Senate.

DEAR MR. CHAIRMAN: Thank you for your letter of March 25, enclosing a copy of Senate Resolution 94, relating to the recognition of the jurisdiction of the International Court of Justice in certain legal disputes hereafter arising, and requesting the views of the Department of State.

The Department notes that the resolution in question would amend Senate Resolution 106 of the 70th Congress, 2d session, by omitting the automatic reservation under which the United States reserved the right to determine unilaterally whether the subject matter of a dispute was essentially within the domestic jurisdiction of the United States. The Department of State favors omission of this automatic reservation from the U.S. declaration accepting compulsory jurisdiction of the International Court of Justice. The following considerations are believed to be relevant.

The reservation of a unilateral right to determine whether a particular matter lies essentially within domestic jurisdiction is regarded by some as inconsistent with the provision in the Statute of the International Court of Justice (art. 36, par. 6) whereby the Court is to decide a dispute whether it has jurisdiction in a particular case. Under that view, such a reservation could be regarded as rendering the U.S. declaration illusory and as evidencing a distrust of the Court, contrary to our policy of support for referral to the Court of international legal disputes which cannot be settled otherwise.

This policy is in aid of the broad U.S. objective of fostering development of the rule of law in world affairs. With an automatic reservation in our own declaration accepting compulsory jurisdiction, the United States is hindered in urging upon all states the judicial settlement of international legal disputes and greater use of the World Court. The U.S. automatic reservation has served as a model for reservations in a number of other declarations accepting compulsory jurisdiction. It would be desirable for the United States to be in a strong position for advocating the elimination of automatic reservations.

Under the Statute of the International Court of Justice (art. 36, par. 2), declarations accepting the Court's jurisdiction are made on a reciprocal basis. Thus any state against which the United States might bring suit is enabled today to invoke against us reciprocally the automatic reservation, and could determine unilaterally that the subject matter of our suit was essentially within the domestic jurisdiction of the defendant state. This is precisely what happened in the Case of Certain Norwegian Loans (*France v. Norway*), decided by the International Court of Justice in 1958. There the defendant Norway successfully invoked the automatic reservation of France, and the French application was dismissed for lack of jurisdiction.

Elimination of the U.S. automatic reservation would not result in conferring jurisdiction on the World Court with respect to disputes over matters essentially within domestic jurisdiction. Disputes of this character would still be subject to exclusion from the Court's jurisdiction under the standard reservation on domestic jurisdiction. The Court would decide in particular cases whether this reservation was applicable.

As a practical matter, retention of the automatic reservation would not afford a defense having significant value. It was the understanding of the Senate when the automatic proviso was adopted that this reservation would never be improperly invoked and that the United States would be bound in good faith to accept the Court's jurisdiction in every case involving matters not essentially within the domestic jurisdiction of the United States. Thus, the United States

as a matter of policy would expect to invoke the reservation only in those cases in which the Court itself would probably uphold a plea of domestic jurisdiction if interposed by the United States on the basis of the domestic jurisdiction reservation without the automatic proviso.

The Department of State notes that Senate Resolution 94 would retain in the resolving clause of Senate Resolution 196, 79th Congress, the words "hereafter arising" as a limitation on disputes to be submitted to the International Court of Justice. In their original context these words referred to the date of Senate Resolution 196, namely, August 2, 1946. In order to avoid any possible doubt as to the import of Senate Resolution 94, it would seem desirable to replace the words "hereafter arising" with an expression such as "arising after August 2, 1946," if it is intended to carry forward the limitation contained in Senate Resolution 196.

With warmest personal regards,
Most sincerely,

WILLIAM B. MACOMBER, Jr.,
Assistant Secretary.

DEPARTMENT OF JUSTICE REPORT ON SENATE RESOLUTION 94

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., June 8, 1959.

HON. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations,
Washington, D.C.

DEAR SENATOR FULBRIGHT: This is in response to your request for the views of the Department of Justice concerning Senate Resolution 94 relating to the "recognition of the jurisdiction of the International Court of Justice in certain legal disputes hereafter arising."

The purpose of Senate Resolution 94 is to amend Senate Resolution 196 of the 79th Congress, 2d session, agreed to August 2, 1946, by which the Senate consented to the U.S. acceptance of the jurisdiction of the International Court of Justice with respect to international legal disputes upon the express terms provided therein. One of these terms reserved from the Court's jurisdiction "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States as determined by the United States." This amendment would delete the words "as determined by the United States" from this reservation.

The legal effect of the proposed amendment would be to affirm unequivocally that the Court is the judge of its own jurisdiction as provided in article 36(6) of the Statute of the Court to which the United States is a party. The proposed amendment would not otherwise change or alter any of the U.S. reservations, including the reservation of disputes with regard to matters which are essentially within the domestic jurisdiction of the United States.

This Department recommends the adoption of this amendatory resolution by the U.S. Senate.

The proposed amendment would tend better to effectuate our settled national policy to encourage and develop the rule of law in the affairs of nations. The existing reservation of a unilateral right to determine what disputes are domestic has had the opposite tendency. First, it has served as an example for other nations to adopt similar limitations on the Court's jurisdiction. Second, it permits other nations on the basis of reciprocity to exercise the same right after a dispute has arisen. The inevitable effect, contrary to our objectives, is to frustrate the purpose of the advance acceptance by nations of the Court's jurisdiction and to weaken the Court as the principal organ of the United Nations for the judicial settlement of international legal disputes.

The proposed amendment would be fully consistent with article 36(6) of the Statute of the International Court of Justice which provides "in the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."

The amendment would be consistent with the comparable reservation with respect to domestic matters in article 2(7) of the Charter of the United Nations.

Experience over a period of 13 years has demonstrated that the Court has not sought in any way to enlarge its limited jurisdiction. On the contrary, the Court in its judgments has meticulously applied relevant principles of inter-

national law on a case-by-case basis after affording to the parties before it full procedural safeguards.

For the foregoing reasons, it is the Department's conclusion that the national interest would be best served by the adoption of Senate Resolution 94.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Very truly yours,

LAWRENCE E. WALSH,
Deputy Attorney General.

The CHAIRMAN. I take this opportunity to note that repeal of the Connally amendment is supported by the President, the Vice President, and the Departments of State and Justice.

COMMITTEE PROCEDURE

In notifying the witnesses of the committee's agreement to receive their testimony, we have asked that oral presentations be limited to 10 minutes each, thus enabling members of the committee to question witnesses should they so wish.

Additional material of reasonable extent will, of course, be considered for inclusion in the record at the request of witnesses. This material will be available to Senators desiring to examine the full record.

Our first witness this morning is the Secretary of State.

I may say, Mr. Secretary, we are delighted you could find time to come and testify on this matter. I can assure you more of the committee members will appear, but they have trouble getting away from their offices at 10 o'clock. We normally meet at 10:30. The other members will have an opportunity to read the record but we would like very much to take your testimony so we will not occupy much of your time.

STATEMENT OF HON. CHRISTIAN A. HERTER, SECRETARY OF STATE, ACCOMPANIED BY ERIC HAGER, LEGAL ADVISER, DEPARTMENT OF STATE

Secretary HERTER. Mr. Chairman, I have before me a prepared statement I would like to read before the committee, but may I say, it will take more than 10 minutes.

The CHAIRMAN. I think we will make an exception of the Secretary of State. We usually do.

Secretary HERTER. Thank you.

Mr. Chairman, I am privileged to appear this morning before the committee in connection with Senate Resolution 94.

This resolution, if adopted, would eliminate the self-judging aspect of the domestic jurisdiction reservation to the U.S. acceptance of the compulsory jurisdiction of the International Court of Justice. Through the self-judging aspect of this reservation, the United States reserved to itself the right to determine unilaterally whether a subject matter of litigation lies essentially within its domestic jurisdiction.

Senator WILEY. Can I ask a question there? Has the Government ever exercised that?

Secretary HERTER. On one occasion, on a part of the *Interhandel* case which was brought by the Swiss Government.

Senator WILEY. Only once in how long a time?

Secretary HERTER. Since 1947.

The CHAIRMAN. 1947.

Senator WILEY. Twelve years.

Secretary HERTER. Yes.

RULE OF LAW IN INTERNATIONAL AFFAIRS

I should like to begin by speaking, for a moment, about the general subject of the rule of law. Stated in its most simple manner, the rule of law in international affairs refers essentially to a set of arrangements within which states can settle their unresolved differences by peaceful means and without resort to force. This conception of the rule of law was stated by the late Secretary Dulles as follows:

We in the United States have from the very beginning of our history insisted that there is a rule of law which is above the rule of man. That concept we derived from our English forebears, but we, as well as they, played a part in its acceptance. * * *

Thus, since its inception, our Nation has been dedicated to the principle that man, in his relationship with other men, should be governed by moral, or natural law. * * *

We now carry those concepts into the international field. We believe that the results thus obtainable, though not perfect, are nevertheless generally fair, and that they are preferable to any other human order that can be devised.

A most significant development of our time is the fact that for the first time, under the Charter of the United Nations, there has been a determined effort to establish law and justice as the decisive and essential substitutes for force.

Let me at this point underscore the obvious proposition that the availability of impartial adjudication and resort to it cannot provide a cure for all of the problems which beset us in the realm of international affairs. One cannot eradicate poverty or disease merely by application to an international tribunal.

Moreover, even with regard to those problems which, by their nature, are justiciable, it is clear that increased resort to adjudication is merely one of a number of steps necessary to promote an international atmosphere in which the exercise of force by any state is unthinkable.

FURTHERING THE RULE OF LAW

The President, writing to Senator Humphrey on November 17, 1959, stated:

One of the great purposes of this administration has been to advance the rule of law in the world, through actions directly by the U.S. Government and in concert with the governments of other countries. It is open to us to further this great purpose both through optimum use of existing international institutions and through the adoption of changes and improvements in those institutions.

Our continued participation in the United Nations and other international organizations is one way in which we are trying to further the rule of law. As you know, we have also been actively engaged in discussions at Geneva concerning the discontinuance of nuclear weapons tests. We are anticipating and preparing for the broader deliberations of the 10-nation disarmament committee which is to convene in March.

HISTORICAL BACKGROUND UNDERLYING CREATION OF INTERNATIONAL COURT

Let me turn now to the subject of international arbitration and adjudication and begin with a little of the historical background underlying the creation of the International Court of Justice as the principal judicial organ of the United Nations.

The late 18th and 19th centuries saw the development of a pattern of ad hoc arbitration in cases in which a dispute between states could not be settled through usual diplomatic channels by negotiation, conciliation, good offices, or other means. Examples of successful arbitral settlements are furnished by the resolution of disputes arising from our treaty of peace with Great Britain of 1782-83, the United States-Canadian boundary dispute, and the Alabama claims.

The Hague Conventions on Pacific Settlement of Disputes, signed in 1899 and 1907, constituted the initial attempt to regularize the arbitration system. These conventions, ratified by over 50 states including the United States, created a Permanent Court of Arbitration. This Court was actually a permanent panel of arbitrators to whom states could turn when they wished to resort to arbitration. The Court possessed no defined jurisdiction, and states which were parties to the conventions did not undertake any binding obligation to consent to the arbitration of international disputes. As in the case of ad hoc arbitration, it was still necessary to have an arbitral agreement in each case.

The United States also entered into a number of bilateral treaty relationships providing for the arbitration of differences. Again, under these arrangements, a special agreement was required in each case for submission of a dispute to the tribunal provided for in the treaty.

The League of Nations, created after the conclusion of World War I, envisaged the creation of the Permanent Court of International Justice, the immediate predecessor of the present International Court of Justice. The Permanent Court was quite similar to the present Court in its structure and jurisdiction. It did not possess a defined jurisdiction binding in all cases upon states which were parties to the Court's statute.

Instead, article 36 of the statute contained a so-called optional clause under which states could make declarations accepting generally the Court's jurisdiction. This arrangement constituted a significant expansion in the scope of impartial adjudication by international tribunals. The United States, however, did not become a party to the statute of the Permanent Court.

ESTABLISHMENT OF THE INTERNATIONAL COURT OF JUSTICE

The San Francisco Conference, held in 1945 shortly before the conclusion of the Second World War, created the United Nations Organization and constituted a new Court, called the International Court of Justice, as the principal judicial organ of the United Nations.

The records of the San Francisco Conference reflect an intensive and extensive debate on the question whether the new International Court should have compulsory jurisdiction over all legal disputes

arising between states members of the United Nations. Although a large number of the states present at the Conference asserted that the Court should have such compulsory jurisdiction, it was decided to make the jurisdiction of the Court optional.

AUTHORIZATION FOR U.S. ACCEPTANCE OF COURT'S COMPULSORY JURISDICTION

After the Charter of the United Nations came into force, it was proposed in the Senate that the United States deposit a declaration accepting the compulsory jurisdiction of the new Court.

Senate Resolution 196 of the 79th Congress proposed to recognize—

• • • as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes hereafter arising concerning—

- a. the interpretation of a treaty;
- b. any question of international law;
- c. the existence of any fact which, if established, would constitute a breach of an international obligation;
- d. the nature or extent of the reparation to be made for the breach of an international obligation.

As reported by the Foreign Relations Committee, Resolution 196 further provided that the declaration should not apply to—

- a. disputes the solution of which the parties shall entrust to other tribunals by virtue of agreements already in existence or which may be concluded in the future; or
- b. disputes with regard to matters which are essentially within the domestic jurisdiction of the United States; or
- c. disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States specially agrees to jurisdiction.

The resolution further provided that the declaration should remain in force for a period of 5 years and thereafter until the expiration of 6 months after notice of its termination.

ADOPTION OF CONNALLY AMENDMENT

During consideration of the resolution in the Foreign Relations Committee, Senator Austin suggested that the provision withholding jurisdiction over domestic disputes be amended so as to include a self-judging reservation similar to the subsequent proposal made by Senator Connally on the floor of the Senate. However, Senator Austin's proposal was rejected by the committee and Resolution 196 was unanimously reported by the committee for favorable Senate action without any self-judging reservation.

The Senate began its consideration of Senate Resolution 196 on July 31, 1946. Shortly thereafter Senator Connally introduced his amendment which added the words "as determined by the United States" at the end of proviso "b" of Senate Resolution 196, so that it would read "disputes without regard to matters which are essentially within the domestic jurisdiction of the United States as determined by the United States."

He stated his view that such a self-judging domestic jurisdiction reservation was necessary because the International Court might take a dangerously broad view of what was an international question and

- thus interfere with U.S. policy on immigration, tariffs, and matters relating to the Panama Canal.

May I, Mr. Chairman, at this point, interject with the observation that Mr. Hager, who is the Legal Adviser of the State Department, is here with me, and if at a later date you wish to ask him any questions with regard to these three matters, which are rather pertinent I think to the whole controversy on this question, he will be prepared to testify.

The CHAIRMAN. Thank you.

Secretary HERTER. Senator Connally's amendment was adopted, and the United States, within these limits, declared itself bound by the compulsory jurisdiction of the Court.

CRITICISM OF CONNALLY AMENDMENT

- Criticism of the amendment was soon voiced in the United States. And it became apparent with the passage of time and the gaining of experience that the self-judging aspect of our domestic jurisdiction reservation was disadvantageous to the United States.

In 1946 and 1947, the American Bar Association adopted resolutions urging elimination of the proviso, reserving to the United States the unilateral right of determination as to what constitutes a matter essentially within its domestic jurisdiction.

OTHER COUNTRIES ADOPTING SIMILAR RESERVATIONS

The assertion by the United States that in every case arising within the compulsory jurisdiction of the Court, it reserved the unilateral right to determine whether the subject fell within the domestic jurisdiction of the United States—and thus lay beyond the jurisdiction of the Court—set an example of ~~supererogation~~ ^{supererogation} which was subsequently copied by several other countries.

- Mexico, France, Liberia, the Union of South Africa, India, Pakistan, and the Sudan proceeded to condition their acceptances of compulsory jurisdiction with self-judging domestic reservations. A similar action was taken by the United Kingdom in excluding from the Court's jurisdiction disputes which the United Kingdom determined to relate to questions affecting its national security or that of its dependent territories.

This pattern, fortunately, did not become very widespread. Indeed, the trend has more recently been reversed, with India, the United Kingdom, and France reconsidering and dropping their self-judging reservations.

RECIPROCAL NATURE OF RESERVATION

- Next, I should like to call attention to another unfortunate effect of the self-judging reservation. It is now apparent that a nation which has such a self-judging reservation may have seriously limited its own ability to take other nations into the Court. This is illustrated by the *Norwegian Loans* case, which was decided by the International Court of Justice in 1957.

Norway had floated public loans in France at the turn of the century. The bonds contained a promise to repay in gold or its equivalent.

lent. After devaluation of the Norwegian currency, a dispute arose as to whether Norway had to comply with the gold clause. The parties could not agree, and since Norway had accepted the compulsory jurisdiction of the Court in 1946 and France in 1949, the French Government instituted proceedings against Norway by application in 1955.

The French acceptance of the Court's jurisdiction contained a self-judging reservation very similar to our own. The French declaration excluded "differences relating to matters which are essentially within the national jurisdiction as understood by the Government of the French Republic."

The Norwegian declaration contained no such reservation. Norway filed objections to the jurisdiction of the Court. One of these was based on the self-judging reservation of France, which Norway contended she was entitled to invoke on the basis of reciprocity. Norway claimed that the manner of repayment of the bonds was a matter essentially within the national jurisdiction of Norway, as understood by Norway. The Court upheld Norway's right to invoke her adversary's self-judging reservation and accordingly determined that it lacked jurisdiction.

INCONSISTENT AND INCOMPATIBLE FEATURES OF RESERVATION

It is clear that this type of reservation is inconsistent with the deeply rooted notion that no one should be a judge in his own cause. Moreover, a self-judging reservation is incompatible with the sixth paragraph of article 36 of the Statute of the Court, which provides that—

in the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

DOMESTIC ISSUES ARE BEYOND COURT'S JURISDICTION

Perhaps a reason for our insistence in 1946 upon a self-judging reservation may have lain in lack of experience with the new Court in operation and a fear that it might construe its jurisdiction expansively. Now we are able to see, in looking back over the 14 years which have elapsed since 1946, that the Court has acted conservatively in the matter of jurisdiction.

Deletion of our self-judging reservation will not operate to give the International Court jurisdiction of domestic matters. There should be no misapprehension on this score. With the removal of the self-judging proviso, our declaration would continue to be subject to the reservation that it is not applicable to "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America."

Secondly, article 36, paragraph 2, of the Statute of the Court specifically provides for compulsory jurisdiction only in legal disputes concerning—

- a. the interpretation of a treaty;
- b. any question of international law;
- c. the existence of any fact which, if established, would constitute a breach of an international obligation;
- d. the nature or extent of the reparation to be made for the breach of an international obligation.

Domestic issues are clearly beyond this jurisdiction.

Matters relating to immigration, tariffs, and the Panama Canal—mentioned in the Senate debates concerning the self-judging reservation—would not be held by the Court to be subjects of international concern, except insofar as the United States had entered into international agreements concerning them.

Furthermore, even where matters relating to these subjects have been incorporated in treaties and other international agreements, the record of U.S. policy and action is such that we need not fear the availability of recourse to impartial international adjudication.

Thirdly, article 2(7) of the charter of the United Nations, upon which the Court's statute is predicated, provides the limitation that:

Nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the members to submit such matters to settlement under the present charter * * *.

PRESIDENT EISENHOWER'S COMMENTS ON SENATE RESOLUTION 94

If the Senate adopts Senate Resolution 94, the administration intends to urge other States having self-judging reservations to eliminate them. As the President said in his message on the state of the Union earlier this month:

There is pending before the Senate, a resolution which would repeal our present self-judging reservation. I support that resolution and urge its prompt passage. If this is done, I intend to urge similar acceptance of the Court's jurisdiction by every member of the United Nations.

OTHER COUNTRIES' REMOVAL OF SELF-JUDGING RESERVATION

Indeed, it should be noted that the removal of our self-judging reservation would be consistent with the constructive steps recently taken by three leading free world countries. On November 26, 1958, the United Kingdom deleted its self-judging reservation, which related to security matters. More recently, on July 10, 1959, France filed a new declaration omitting its previous self-judging reservation. On September 14, 1959, India deposited a new declaration accepting compulsory jurisdiction which, similarly, did not repeat a self-judging reservation.

STRONG ADMINISTRATION SUPPORT FOR SENATE RESOLUTION 94

Once we have acted to strike our own self-judging clause, we will be in a vastly stronger position to seek the goal recently stated by the President.

As I said, Mr. Chairman, at the beginning of my testimony, development of a working rule of law in the world, displacing resort to force, is a supreme goal for the community of nations. We believe that increased availability of international adjudication, and the use of this means of pacific settlement, can make a meaningful contribution to the total effort of U.S. foreign policy.

The Department of State and the administration as a whole strongly support Senate Resolution 94. We hope for its early adoption.

The CHAIRMAN. Thank you very much, Mr. Secretary.

COMMITTEE PROCEDURE

For the information of the committee, the Attorney General is to appear subsequent to the Secretary, and the Secretary has an appointment at 11. He, of course, will be available for questioning later, and his legal adviser will be available the rest of the day.

The Attorney General also informed me that he is engaged to go out and make a speech, and has to leave town about 11:30 or a quarter of twelve, as I understand it, but it was very important, I thought, in the opening of these hearings, that we have these representatives of the administration.

I say that because I hope we can limit our questions so that everybody will have at least one opportunity for questioning.

It is quite obvious, I think, that we will have to have further hearings.

CONTROVERSIAL NATURE OF SENATE RESOLUTION 94

Mr. Secretary, as you know, and I am sure you do, there has developed within the last few days or few weeks at most, quite a concerted campaign against the repeal of this amendment. The committee has received some 700 telegrams, many of them quite identical, and it is obvious that there is a campaign, an organized campaign.

So one thing that concerns me very much is that this will be highly controversial, and I wondered what your judgment is. Should it be brought out onto the floor and an attempt made to pass this resolution, if the probabilities are not very strong that it would be accepted, or would it cause any bad reaction internationally if we attempted it and we failed? - 1 - 2

Secretary HERTER. I do not think so, necessarily, Mr. Chairman. The question of judgment as to whether to bring it out on the floor, of course, is a matter for the members of the committee to resolve, and not for us to resolve.

The CHAIRMAN. I realize that. What I was asking you is: What do you think the effect on our international relations would be if we fail?

I did not ask you whether we should bring it out.

Secretary HERTER. Mr. Chairman, I think that would depend quite considerably upon the degree of support which it received both from the committee and on the floor itself.

In a matter of this kind, which I realize is controversial, a two-thirds vote is a very appreciable vote to obtain in the Senate. I would hope very much, though, that as a result of the hearings, you might find it possible to secure that vote.

The CHAIRMAN. Well, can I be assured that you speak for the administration and that the administration is not divided and that they will lend it their full support to the limit of their influence to help get it through the Senate?

Secretary HERTER. I have tried to make it as clear as I could.

The CHAIRMAN. There is no doubt about it? There is no division of opinion within the administration on this subject?

Secretary HERTER. No.

The CHAIRMAN. Senator Green, would you like to ask questions?

Senator GREEN. No. This is a very clear statement.

The CHAIRMAN. Senator Wiley?

Senator WILEY. None.

The CHAIRMAN. Senator Sparkman?

Senator SPARKMAN. No questions.

The CHAIRMAN. Senator Hickenlooper?

Senator HICKENLOOPER. I have just one question, Mr. Chairman.

Mr. Secretary, this is a very important matter, and I certainly dislike to be limited to just one question, which is necessary this morning, I understand.

The CHAIRMAN. Well, you need not be limited to one, as the other members did not ask any questions.

LIMITATIONS ON INTERNATIONAL COURT'S AUTHORITY

Senator HICKENLOOPER. I will ask just one question at this time, but I hope we will have ample opportunity to pursue this subject.

In most countries, the court is not autonomous, but is, as a rule, controlled and directed and limited by either a constitutional measure or by legislative limitation.

What body or what reasonably accessible authority can be brought to bear to control the World Court, to keep it from becoming a completely autonomous, independent body not subject to any inhibitions of any kind?

Secretary HERTER. As far as I know, sir—Mr. Hager can perhaps give you a better legal answer than I can on this—as far as I know, it is not inhibited by anything except what becomes known as the accepted rules of international law. Those can, of course, be changed by judicial decisions.

Senator HICKENLOOPER. Yes. But it is the judicial decision. Is the judiciary passing upon itself?

It seems to me that is a question and an area that I think we should explore very carefully.

Secretary HERTER. May I ask that Mr. Hager—

Senator HICKENLOOPER. What kind of limitations upon excesses of the Court, if excesses should occur in its decisions, would we have as safeguards?

Secretary HERTER. The safeguard that we have, sir, is in the reservation we made ourselves that after 5 years—this was in 1947—on giving notice, we could withdraw within 6 months' time.

Senator HICKENLOOPER. Thank you. That is all.

The CHAIRMAN. That was not very clear. You say after 5 years we may withdraw with 6 months' notice?

Secretary HERTER. With 6 months' notice.

The CHAIRMAN. We can revoke this under this resolution?

Secretary HERTER. Yes. I think I read the pertinent provision in my testimony.

Senator HICKENLOOPER. I do not want to pursue it any further. The time is short this morning, Mr. Chairman.

The CHAIRMAN. I want to make it clear that if any member of the committee desires to ask further questions, he will have the opportunity. I just wished to call attention to the two Cabinet members' previous engagements.

Senator HICKENLOOPER. I understand that thoroughly. It is no complaint on my part it has to be done this way. But I hope we will have an opportunity to discuss this with the Secretary and the Attorney General personally at some length before final action is taken. The CHAIRMAN. At any length the committee desires. Senator Mansfield.

CASES HANDLED BY THE INTERNATIONAL COURT

Senator MANSFIELD. Mr. Secretary, how long has the Court been in existence?

Secretary HERTER. Since 1947.

Senator MANSFIELD. How many cases has it heard?

Mr. HAGER. I think about 13, sir.

Senator MANSFIELD. Is one of the reasons why it has not heard more cases because of this reservation?

Secretary HERTER. Excuse me. I think that is very definitely our conclusion.

ADMINISTRATION SUPPORT FOR SENATE RESOLUTION 94

Senator MANSFIELD. And the administration—including the President, the Vice President, the State Department, the Attorney General, the Justice Department—is wholeheartedly behind Senate Resolution 94?

Secretary HERTER. Yes, sir.

Senator MANSFIELD. That is all, Mr. Chairman.

The CHAIRMAN. Senator Aiken?

Senator AIKEN. No questions at this time, Mr. Chairman.

The CHAIRMAN. Senator Lausche?

APPLYING RULE OF LAW TO RELATIONS BETWEEN NATIONS

Senator LAUSCHE. It is my understanding that the basis of your promulgation of the acceptance of this resolution is that you are wanting to apply a rule of law to the relations between nations that normally has been applied, first, to the family, where the father has been, not in the form of a declared law but as a person, the ruler, and second, by the chief in the tribe, and third, by the law within nations.

The present theory is that you cannot have law by man but you must have rule by law that is reflective of natural moral principles and natural laws.

Based upon the acceptance that no society could exist without law governing the people within the society, you reach the conclusion that that same principle should be applied to nations?

Secretary HERTER. That is correct, Senator.

JURISDICTION OF THE INTERNATIONAL COURT

Senator LAUSCHE. Now, just one further question:

If this resolution is adopted, the Court will determine whether the dispute is one of international concern or solely of domestic concern in finally deciding whether it shall accept jurisdiction?

Secretary HERTER. That is correct.

Senator LAUSCHIE. Maybe I should not put this question at this time, but it will have to be explored. The Court will have jurisdiction in disputes arising out of what are alleged to be transgressions on obligations incurred in a treaty.

Secretary HERTER. In a treaty.

Senator LAUSCHIE. Will the ability to determine whether an agreement has the dignity of a treaty or not, create any problems in determining that issue?

Secretary HERTER. I do not think so, Senator.

Senator LAUSCHIE. That is, what is or what is not a treaty will not be a serious obstacle in determining whether the Court will have jurisdiction?

Secretary HERTER. I do not think so, Senator. In our own reservation we make it very clear as to the areas in which the Court could take jurisdiction, and the word "treaty" I think is a clearly defined obligation taken by us with the approval of our constitutional processes.

Senator LAUSCHIE. That is, the definition of a treaty, according to the Secretary's understanding, would be an international understanding reached between our country and another country in conformity with the processes outlined in the Constitution?

Secretary HERTER. Correct.

Senator LAUSCHIE. An agreement reached by the President himself, not in conformity with the requirements of what must be done when a genuine treaty is reached, would not fall within the jurisdiction of the Court?

Secretary HERTER. Mr. Hager tells me that there are some complications in that, that he would like to have the privilege of testifying at greater length on that later.

Senator LAUSCHIE. That is why I felt that question ought not be explored today. It is one that will have to be checked into.

That is all I have to ask.

TERMS OF NOTICE TO TERMINATE DECLARATION

The CHAIRMAN. Mr. Secretary, in the resolution before us I do not see the 5-year limitation. Does that arise out of the original resolution relating to the Court?

Secretary HERTER. Out of the original, yes.

The CHAIRMAN. Reading the resolution, it would appear that 6 months' notice is all that is required. Which is it? Does the 5-year term apply if we adopt the resolution?

Secretary HERTER. 196 said 5 years.

The CHAIRMAN. But Senate Resolution 94 does not contain that terminology. I was wondering what your Legal Adviser's opinion is as to the effect of the proviso at the bottom of page 2 of the pending resolution?

Secretary HERTER. The resolution that was adopted had this proviso at the end:

"That such declaration shall remain in force for a period of 5 years and thereafter until the expiration of 6 months after notice may be given to terminate the declaration.

Senator SPARKMAN. What is 196? Is that the House resolution?

Secretary HERTER. That was the Senate resolution.

The CHAIRMAN. That was adopted in 1946?

Secretary HERTER. It was adopted in 1946.

The CHAIRMAN. Senate Resolution 94 does not contain the language relating to a 5-year period. Does this supersede it? I am not clear on it. The 5 years having expired since 1946, it seems to me that in 6 months you could terminate the declaration.

Secretary HERTER. You could from now on.

The CHAIRMAN. From now on in 6 months?

Secretary HERTER. That is right.

The CHAIRMAN. You do not have to abide by the 5 years?

Secretary HERTER. This would carry over, the 5-year period is gone.

The CHAIRMAN. It is gone. That is what I was not clear on. From here on, if we decided, if the President decided, say next year, that he was dissatisfied, he could give notice and in 6 months this provision would lapse; is that correct?

Secretary HERTER. Right.

OTHER COUNTRIES WHICH HAVE ADOPTED SIMILAR RESERVATIONS

The CHAIRMAN. Mr. Secretary, has the administration made any preliminary soundings out which would give any indication as to whether or not all of the remaining countries with these reservations would in fact follow the lead of this Government if we should adopt this resolution?

Secretary HERTER. I do not think we have taken any formal soundings, but I think that with the action taken by Great Britain, France, and India, all within the last 18 months, if we likewise took action, we would find that it would be very likely that those who have reservations today of this type would give them up.

DO IRON CURTAIN COUNTRIES ADHERE TO COURT'S JURISDICTION?

The CHAIRMAN. Mr. Secretary, are any of the so-called Iron Curtain countries adherents to the Court's jurisdiction?

Secretary HERTER. There is one case pending at the present time in which that matter may be up for adjudication before the Court itself. Bulgaria was a signatory of the League of Nations and at the same time of the Court that was established under the League of Nations. There has been a contention that in adhering to that, it carried over in connection with the United Nations, and Bulgaria claims it does not.

Is that not correct? And that is up for adjudication in the case we have before the Court at the present time.

The CHAIRMAN. That is the only one? None of the others ever accepted—

Secretary HERTER. So far as we know, no.

DO ANY U.S. TREATIES CONTAIN SELF-JUDGING RESERVATIONS?

The CHAIRMAN. Mr. Secretary, is the reservation of a unilateral right to determine what lies within our own jurisdiction contained in any treaties to which the United States is a party?

Secretary **HERTER**. That I cannot answer. I think we will have to look into that. I am not familiar with any.

(The following information was subsequently submitted for the record:)

No treaty concluded by the United States by and with the advice and consent of the Senate contains the reservation of a unilateral right to determine what lies within our own jurisdiction. However, the reservation of such a unilateral right is implicit in the claims provisions of bilateral agreements for economic cooperation concluded with 15 European countries in 1948, the technical co-operation agreement of 1952 with Israel, and the economic aid agreement of 1953 with Spain. These agreements, concluded by the executive branch pursuant to congressional authorization, provide for submission to the International Court of Justice of claims espoused by either Government on behalf of its nationals, but the undertaking of the U.S. Government is specifically limited by the terms and conditions of such recognition as "heretofore given" to the compulsory jurisdiction of the International Court of Justice. In some cases the undertaking of the other government is also specified to be limited to its recognition "heretofore given" to compulsory jurisdiction. The latter are indicated by an asterisk in the list below:

Country	Subject	Date	Text
Austria	Economic cooperation	July 2, 1948	TIAS 1780.
*Belgium	do	do	TIAS 1781.
*Denmark	do	June 29, 1948	TIAS 1782.
*France	do	June 28, 1948	TIAS 1783.
Greece	do	July 2, 1948	TIAS 1780.
Iceland	do	July 3, 1948	TIAS 1787.
Ireland	do	July 2, 1948	TIAS 1788.
Italy	do	June 28, 1948	TIAS 1789.
*Luxembourg	do	July 3, 1948	TIAS 1790.
*Netherlands	do	July 2, 1949	TIAS 1791.
*Norway	do	July 3, 1948	TIAS 1792.
*Sweden	do	do	TIAS 1793.
*Turkey	do	July 4, 1948	TIAS 1794.
*United Kingdom	do	July 6, 1948	TIAS 1795.
Portugal	do	Sept. 28, 1948	TIAS 1819.
*Israel	Technical cooperation	May 9, 1952	TIAS 2561.
Spain	Economic aid	Sept. 26, 1953	TIAS 2851.

PROCEDURE FOR WITHDRAWAL FROM COMPULSORY JURISDICTION OF INTERNATIONAL COURT

Senator **AIKEN**. Mr. Chairman, may I ask one question?

The **CHAIRMAN**. Yes, Senator Aiken.

Senator **AIKEN**. May I ask, Mr. Secretary, if withdrawal of the United States from the compulsory jurisdiction of the International Court would be effected by proclamation of the executive branch or act of Congress, or what is the procedure?

Secretary **HERTER**. I am assuming it would have to be done by resolution of the Congress.

Senator **AIKEN**. And if by act of Congress, would a two-thirds vote be required, and so on? Will someone answer those questions?

Secretary **HERTER**. I think we can get you the answers to that.

Senator **AIKEN**. All right.

(The following information was subsequently submitted for the record:)

In the view of the Department of State, termination of the U.S. acceptance of the Court's compulsory jurisdiction would be effected by the filing, at the direction of the President, of a notice with the Secretary-General of the United Nations stating that the United States withdrew and terminated its acceptance of the Court's compulsory jurisdiction under article 36, paragraph 2 of the statute of the Court. This action by the executive branch might be taken fol-

lowing a Senate resolution, or a resolution of both Houses of the Congress. On the other hand, the President could decide to file a notice of termination in his own discretion.

PROCEDURE FOR GIVING EFFECT TO ADOPTION OF SENATE RESOLUTION 94

The CHAIRMAN. I believe that is about the same question I had next. But I want to be sure it is in the record. In the event the Senate were to approve Senate Resolution 94, what would be the procedure to be followed in giving effect to the revision?

Secretary HERTER. May we give you that answer precisely.

The CHAIRMAN. Would the President file a notice to terminate the declaration of August 14, 1946, whereupon at the end of 6 months a new declaration be filed? You can include that in the questions.

(The following information was subsequently submitted for the record:)

In the view of the Department, the President could arrange to have filed a new declaration, in accordance with S. Res. 94, immediately upon the passage of that resolution, since the purport of our action would be to agree to an enlarged jurisdiction for the International Court of Justice. While it might not be strictly necessary for a notice of termination to be filed with respect to the declaration of August 1946, it might be considered advisable, for the purpose of clearing the record, to file such a notice at the same time when the new declaration is filed. The notice of termination with respect to the 1946 declaration would become effective at the end of 6 months.

COMMITTEE PROCEDURE

The CHAIRMAN. Any other questions?

Well, Mr. Secretary, it is evident, I think, that some of the members will wish to question you further. But in view of the previous engagements that you and the Attorney General have, we will excuse you today, because we have a very long list of witnesses. I am sure that in the course of these hearings and the further hearings, further questions will arise about which we will notify you and your Legal Adviser and expect some further development of these questions.

Senator SPARKMAN. Mr. Chairman, how long is it contemplated the hearings will continue?

The CHAIRMAN. Today, it is contemplated they will go on all day.

Senator SPARKMAN. No, I mean to complete.

The CHAIRMAN. That will be up to the disposition of the committee.

Senator SPARKMAN. The thought that occurs to me is that we might very well run through the hearings and then have it understood that the Secretary and his Legal Adviser will come at the conclusion.

The CHAIRMAN. That is what I had in mind, if the committee so wishes. I do not know how we will proceed.

Senator SPARKMAN. I think many of us would like to propound questions but we are not doing it today at this time.

Secretary HERTER. Mr. Chairman, I appreciate that very much, and certain questions will arise during the course of the hearings and it would be very much appreciated by us if we could have an opportunity to comment on them.

The CHAIRMAN. Thank you very much, Mr. Secretary.

The next witness is the Attorney General of the United States, the Honorable William P. Rogers.

Mr. Rogers, we are very pleased that you can be with us this morning, and we welcome your advice on this measure.

**STATEMENT OF HON. WILLIAM P. ROGERS, ATTORNEY GENERAL
OF THE UNITED STATES, ACCOMPANIED BY ROBERT KRAMER,
ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL,
DEPARTMENT OF JUSTICE**

Mr. ROGERS. Mr. Chairman, I would just like to introduce Mr. Robert Kramer, who is the Assistant Attorney General in charge of the Office of Legal Counsel and had planned to testify this morning. But, as I explained to you in my telephone conversation, I was anxious to appear here particularly in view of the fact that the Secretary of State appeared, and I appreciate particularly the fact that you indicated a willingness not to question me at length, although I do hope that you feel free to ask some questions.

I do not want to give the impression that I have to leave immediately.

The CHAIRMAN. Could we have the same understanding, that after the hearings we will submit further questions as they appear appropriate?

Mr. ROGERS. Yes, Mr. Chairman.

SUPPORT FOR SENATE RESOLUTION 94

I appreciate the opportunity to appear today to testify in support of Senate Resolution 94. That resolution would revise our 1946 acceptance of the jurisdiction of the International Court of Justice to eliminate the self-judging aspect only of our reservation of domestic matters from the Court's jurisdiction.

On June 8, 1959, the Department reported on this resolution and recommended its adoption.

In his state of the Union message of January 7, 1960, the President stated his support of the resolution and urged its prompt passage.

This morning the Secretary of State has reviewed comprehensively the background of the resolution, its relation to the fundamental objectives of our foreign policy, and the necessity for its early passage to effectuate that policy. The Department of Justice is in full accord with the Department of State, and I shall not retrace this ground.

EFFECT OF SENATE RESOLUTION 94

In 1946 the United States accepted the jurisdiction of the Court, as defined and limited in the Court's statute, but upon several conditions. One of those conditions specifically reserved from the Court's jurisdiction is "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America."

The pending resolution would accord the advice and consent of the Senate to the elimination of the self-judging aspect of that reservation, embodied in the phrase, "as determined by the United States of America."

It would not—and I underline this, as I believe there has been some misunderstanding concerning it—in any way alter our specific reservation from the Court's jurisdiction of disputes with regard to domestic matters. It would only clearly and plainly make the Court the judge of its own jurisdiction.

This is fully in accord with the provision of article 36(6) of the Court's Statute to which we are a party. That section provides, "in the event of a dispute as to whether the court has jurisdiction, the matter shall be settled by the decision of the Court."

COMMITTEE ACTION ON RESERVATION IN 1946

You will recall that in 1946 this committee unanimously recommended against the inclusion of the self-judging reservation. This was done advisedly and deliberately.

The committee rested its recommendation principally on the grounds that—

(1) The ultimate purpose of the resolution was to lead to general worldwide acceptance of the jurisdiction of the Court in legal cases and that "a reservation of the right of decision as to what are matters essentially within domestic jurisdiction would tend to defeat the purposes which it is hoped to achieve by means of the proposed declaration";

(2) That the jurisdiction of the Court by definition was strictly limited to international matters and necessarily excluded domestic matters;

(3) That if the question whether a matter was international or domestic "were left to the decision of each individual State, it would be possible to withhold any case from adjudication on the plea that it is a matter of domestic jurisdiction"; and

(4) That "it is plainly the intention of the statute that such questions should be decided by the Court."

ADVERSE EFFECTS OF RESERVATION

Although the unanimous committee recommendation was rejected, the soundness of its view has been confirmed by experience.

First, the self-judging aspect of our reservation has tended to create doubt in the international community of the good faith of our declared intention to accept the jurisdiction of the Court. So long as we insist on its retention it will be difficult to dissipate that doubt.

Second, the action of the United States in adopting a self-judging reservation set an unfortunate example which was followed by several other nations. Three of these, however, have recently dropped this type of reservation.

Third, it is, nevertheless, worth noting that more than 30 free nations have accepted the Court's statutory jurisdiction without similar reservation.

Fourth, on the basis of reciprocity, a nation, even one without a similar reservation, may be able to invoke our reservation so as to defeat the Court's jurisdiction.

In the *Norwegian Loans* case (ICJ Report 9 (1957)), on a complaint brought against Norway by France, Norway successfully in-

voked France's self-judging reservation to defeat the Court's jurisdiction, at the threshold.

In the ever-broadening context of our worldwide interests, such a result is patently inimical to those interests.

Fifth, the reservation is at war with several of our basic concepts for which we seek universal acceptance. Those concepts are that no nation shall act as judge in its own case, and that a court, and not a litigant, should have the right to determine at the threshold of a case whether or not the court has jurisdiction to decide the case.

PERFORMANCE OF THE INTERNATIONAL COURT

- The adverse effects which were foreseen by the committee have materialized since the adoption of the reservation. The basic argument advanced both when the reservation was initially under consideration and now, is that the reservation is necessary in order to preclude the Court from exercising a domestic jurisdiction over matters such as immigration, tariffs, and the Panama Canal, and the like, not granted to it.

It was urged, too, that this danger was enhanced because of the uncertain quality of the judges and the absence of a well-defined body of international law to be applied by the Court.

When the Court was new, no evidence was available to test the validity of these assumptions. Now, after 14 years of experience with the Court, these grounds do not withstand objective examination.

Although the operation of the Court has been under close international and national scrutiny—and there is a footnote here, see “Report on the Self-Judging Aspect of the U.S. Domestic Jurisdiction Reservation With Respect to the International Court of Justice,” American Bar Association, Section of International and Comparative Law (August 1959) and bibliography therein—it has not been suggested that the Court has sought to extend its jurisdiction in any case beyond the limits of its statutory grant in order to deal with matters of domestic jurisdiction.

- No evidence has been adduced that any of the judges do not meet the high qualifications prescribed for the office by the Court's statute, nor has there been any evidence that the relevant principles of international law have been ascertained or applied by the Court in any different way than our own courts perform the same functions.

In short, there has been no supported challenge to either the fairness of the procedures of the Court or the integrity of its decisions. It seems fair to say that courts, like other human institutions, should be judged by their performance. On the basis of performance, fears of usurpation of domestic jurisdiction seem unfounded.

- The self-judging aspect of our reservation has proved inconsistent with and harmful to our fundamental purpose: to encourage the rule of law through the judicial settlement of legal disputes between nations. Our reservation in this respect is unwarranted by our 14 years of experience with the Court in operation.

The Department of Justice therefore renews the recommendation that this part of the reservation be eliminated at the earliest possible date.

QUESTION OF ENUMERATION OF DOMESTIC MATTERS

The CHAIRMAN. Thank you very much, Mr. Attorney General.

I noticed you pointed out the retention of the specific provisions limiting the jurisdiction of the Court. It has been suggested that perhaps there might be a specific enumeration of some of these items over which it has been alleged jurisdiction would be taken by the Court.

Would you accept such a course or not? Do you have any comment?

Mr. ROGERS. Mr. Chairman, I do not believe I would recommend it. I am not sure I would oppose it. I think in our debate here, we can, in a sense, create a legislative history which will have some bearing on the Court's action.

U.S. RECOURSE IN EVENT OF ARBITRARY ASSERTION OF JURISDICTION

I certainly do not think that there is any risk that the Court would assume jurisdiction over those matters. On the contrary, I think probably the difficulty the Court will have, if it has a little more authority, is that they will be inclined not to assume jurisdiction, because they have to depend almost totally on opinion for endorsement.

In other words, it is not like our own courts; it has no enforcement power. So that I do not—although I understand the concern of people who are concerned, I do not agree with it, and I think that when we say we believe in the rule of law, and advocate it as a Nation, that we have got to make a start on that road.

And I think, as the chairman pointed out, we can withdraw on a 6-month notice at any time, and I think that the Court is conscious of all the things that we are talking about here this morning, and I do not believe that there is any risk that they would assume jurisdiction over things that are domestic in nature.

But as I say, I would not oppose it if the Congress feels that that would be wise.

The CHAIRMAN. To put it a little different way: If by chance, and unexpectedly, the Court should appear arbitrary in the assertion of jurisdiction, then our recourse would simply be to give notice that we will no longer, after 6 months, abide by this jurisdiction; is that correct?

Mr. ROGERS. That is correct, Mr. Chairman. Furthermore, the Court has no enforcement power. I mean, the only enforcement power would be to go to the Security Council and get action by the Security Council, and we have a veto there.

So it, in effect, depends upon world opinion for enforcement of its decision.

ADVANTAGES IN REPEAL OF RESOLUTION

The CHAIRMAN. Can you not see any real danger to the interests of this country in the passage of this resolution?

Mr. ROGERS. I do not, Mr. Chairman.

On the contrary, I think it would greatly enhance the prestige of our Nation throughout the world.

I think, as I said before, I think it is not possible for us to continue to say that we are a Nation that believes in the rule of law and we are

against force and we hope that the rule of law can be used to settle international disputes, and yet we are not ourselves willing to abide by it, and I think it is interesting that France, under President De Gaulle, has repealed their reservation.

• Certainly, they are just as interested, France is just as concerned with sovereignty as we are.

The CHAIRMAN. Would it be reasonable to assume that because of our very extensive interests in all parts of the world, of various kinds, particularly commercial interests, that there would be a great advantage to us, if this reservation were repealed?

Mr. ROGERS. I think there is no question about that. I think it would be a great advantage.

The CHAIRMAN. Senator Green, do you have a question?

Senator GREEN. No, I have no questions.

The CHAIRMAN. Senator Wiley?

Senator WILEY. None.

The CHAIRMAN. Senator Sparkman?

Senator SPARKMAN. With the same understanding he will come back later, I will waive any questions at this time.

• The CHAIRMAN. He has some time. He said he could stay until 11:30. I did not mean to cut it off that short.

Senator SPARKMAN. I will pass.

• The CHAIRMAN. You may feel free to go on another 30 minutes if you care to.

Senator Hickenlooper?

GUIDELINES FOR THE INTERNATIONAL COURT

• Senator HICKENLOOPER. Yes. I have one or two questions, and I hope we can discuss this further with Attorney General Rogers at a later date.

You made a great point, and a great point is made, about the rule of law. It is not possible that we are confusing the phrase "rule of law" with rule of judges?

Now, I think there is a vast difference between the rule of law and the arbitrary, or what might in certain cases be the capricious, decision of judges. One of the things I think we should explore in this field is what reliable or detailed body of law is there to guide or control the judicial body which usually is an interpretative body and not, that is, according to theory, and not always according to practice, a lawmaking body.

Mr. ROGERS. Well, I think that is something that the committee should be concerned with, and we all should be concerned with it.

A START TOWARD HAVING INTERNATIONAL LEGAL DISPUTES SETTLED JUDICIALLY

I think what I am suggesting is this, Senator: that this is one of the few ways we have even to make a start on the road to having international legal disputes settled by a Court.

• I do not think by any stretch of the imagination that the repeal of this reservation is going to take us very far down the road. I think it is just going to give us a start, and I think if nations realize that they can trust a judicial body to settle some of these problems, and

have some experience in a limited way, that they will come to have confidence in the system of judicial determinations, just as we have come to have confidence in judicial determinations as a way to settle disputes here at home.

If this were a plan which was very all-encompassing, which we were forever committed to, and the Court had strong enforcement powers, my attitude would be different. But, as I say, I cannot foresee that the Court would, even if we repeal this reservation, have a great deal of business.

I would hope they would have more than they have had these last few years, but I still do not think there would be too many cases. It would have to have world support behind it. If it usurped its authority, its jurisdiction, then the other nations would withdraw, and what I am suggesting is we ought to make a start and see how it works, and I think if we tried to do it, made a start and gave it a try, we would all develop confidence in the Court.

ENFORCEMENT OF COURT'S DECISIONS

Senator HICKENLOOPER. Well, I certainly do not disagree with the philosophy and the objectives.

However, lacking a body of law which in some detail outlines the jurisdiction of this Court, it would seem to me that we should be cautious in consideration of this matter.

Now, so far as being bound by these decisions of the Court, and the Court having no enforcement powers whatsoever, of course, that is true. The Court does not have an army or a navy or——

Mr. ROGERS. Or a U.S. marshal.

Senator HICKENLOOPER. U.S. marshal or deputies to go out and physically enforce the edicts of the Court. But, historically, it does have enforcement powers so far as the United States is concerned. Unfortunately, that power does not extend to other countries. The United States has undertaken to keep its commitments once it has agreed to something of this kind.

Mr. ROGERS. That is right, and I certainly do not want to leave the impression that I disagree. I agree with that, and I think we would be committed to abide by the decision, but we could withdraw on 6 months' notice.

Senator HICKENLOOPER. I call your attention to a case a few years ago in Morocco, where the United States and France went in for an adjudication in one of these tribunals on the disputes there. Fortunately for us, I think we won it on every detail of the case, but the French did not abide by it.

On the other hand, we keep our commitments, so there is that enforcement power, so far as we are concerned, on the part of the Court.

Mr. ROGERS. That is right.

Senator HICKENLOOPER. And we follow our traditions; and I would hope we would.

Mr. ROGERS. We would have to do that, and that would be part of our acceptance; if we accepted the jurisdiction, we would expect to be bound by that decision.

Senator HICKENLOOPER. Of course, you could have a body of statute law as extensive as you wanted and if a nation elected not to abide by those statutes, I suppose they could welsh on their agree-

ments. But so far as the withdrawal from this declaration is concerned, at the end of, say, 6 months or whatever the period is, it does not seem to me that that is a real safeguard except for matters in the future.

Mr. ROGERS. That is right.

Senator HICKENLOOPER. If a matter comes up in which we feel we have been put upon by a whimsical decision of this Court and we say we will withdraw, I think, under the traditions which we have, we would still feel bound to carry out even the whimsical decision of the Court made while we submitted ourselves to its jurisdiction.

Mr. ROGERS. I think that is right.

Senator HICKENLOOPER. To withdraw would merely be locking the door after the horse was gone.

Mr. ROGERS. I agree with that.

POSSIBILITY OF OTHER COUNTRIES TAKING ADVANTAGE OF U.S. POSITION

Senator HICKENLOOPER. And this in many ways is an emotional matter; it is an idealistic matter; it is a completely worthy purpose; but just how far we are getting ourselves unilaterally committed to submit ourselves to certain jurisdiction is a matter that I think is extremely important.

Now, we have seen growing over the world—and, frankly, I think it is not a very happy picture—a number of nations, coming into the United Nations, and we have seen the influence of the United States, let us say, lessened all the time.

In other words, the United States is probably the most affluent country, the most prosperous country in the world, and it has in some ways become literally fair game for all of the lesser developed countries that want to take pot shots at us in one way or another. And I think the evidences are many along that line. In some ways, it is like suing an insurance company—"they have lots of money, so why worry about the merits of the case. Bring in a judgment against them and they can pay it and it will not hurt them."

Are we apt to get ourselves into that kind of a situation as the most affluent country in the world in any kind of a dispute, and just be put upon because we are a nation that they think can afford it?

Now, maybe that is a little far-fetched, maybe I am raising some questions that should not be raised against the sacredness of some kind of a court that is set up here. But in the absence of a body of law that pretty clearly defines the jurisdiction of this court, and what it can do, I think we ought to look at it pretty carefully before we abandon ourselves before the rest of the world.

Mr. ROGERS. I would just like to make a couple of comments about your statement.

First, I do not want to suggest that when I referred to the 6-month period I was suggesting that we should refuse to go along with a decision of the Court.

Senator HICKENLOOPER. No; I did not so understand.

Mr. ROGERS. I mentioned the 6-month period because I agree that there are a lot of people who have a fear that you have just voiced and

I think that the fear is not as real as it—I mean, it is greater than it should be, because this is a safeguard. If the things that people fear should develop, then we could withdraw in a 6-month period. I just do not think that is going to happen and I do not think the Court is going to decide things based on whimsy. In other words, I do not think you are going to have a whimsical decision.

Naturally, in any litigation, you can be disappointed. I have never lost a case that I was pleased about, and I undoubtedly—nations firmly believe in the rightness of their position on a particular contract or a particular argument about property or something, confiscation or something else, and I can see why they might be disappointed.

But I think that the Court will follow the rules of international law, and really the only thing we have to fear to begin with is this concern about domestic jurisdiction. I do not think there is really any risk that they will decide anything which is considered domestic.

Now, I realize that people can feel the other way, but that is my belief, and I do not know of any other way we can start to solve our legal problems now unless we try it.

Way back in Calvin Coolidge's day, he was for this, and all our leaders have talked about it ever since, but we have not given it a try and what I am asking or suggesting is that we try it; see how it works.

Senator HICKENLOOPER. Well, I think Cal was against fishing at one time as a silly sport, but he later changed his mind and became quite an ardent fisherman.

Mr. ROGERS. I think you will find that most of the leaders of our country have supported this. I do not think he changed his mind on this; he may have on fishing.

RULE OF LAW AS OPPOSED TO RULE OF MAN

Senator HICKENLOOPER. I say the ideals are perfectly worthy, and I have no objection to them, and I think we should work toward this end, and I have respect for the members of the Court as it is now constituted.

Quite a number of them I know with varying degrees of familiarity, with no great familiarity, with the exception of one or two I have met on several occasions. And I think they are able jurists and able international jurists, and they are dedicated people so far as I know. But we still believe pretty strongly in this country in the rule of law and not the rule of man, and I would not want to see us get into a situation where this would be the rule of man, and it would be too apt to be that unless a court had some statutory limitation, clearly definable, as to its jurisdiction.

If you do not have that but just have a court that can arbitrarily decide things, just willy-nilly as it pleases—we have gone through that historically in the Anglo-Saxon history of jurisprudence and law, and so on; we went through that many years ago and we developed a system we think fairly safeguards against that and those practices that existed centuries ago.

That is all, Mr. Chairman, at this time.

The CHAIRMAN. The Senator from Ohio.

ADMINISTRATION POSITION IN 1946

Senator LAUSCHE. Does the Attorney General know what the position of the President of the United States was in 1946 on the measure that was then pending? I take it that Truman was President.

Mr. ROGERS. Yes. I do not recall exactly, Senator. I should. I honestly do not remember. Maybe you know.

Senator LAUSCHE. I just assume he was for it. It came before the Senate and it must have come over as a proposed treaty.

Well, my second question would be: What was the position of the Secretary of State? And I assume that he at that time was Dean Acheson.

Mr. ROGERS. I believe so.

Senator LAUSCHE. You are not able to answer that question?

Mr. ROGERS. Unfortunately, not having planned to be here this morning, I did not review the history of this as closely as I should have. My recollection is that he was, he favored the committee's action. He was against the reservation.

APPOINTMENT OF JUDGES OF THE COURT

Senator LAUSCHE. How are the judges appointed?

Mr. ROGERS. As I recall it, they are appointed by the Assembly. The Assembly and the Security Council on nominations appoint them.

Senator LAUSCHE. That would become very important and it has a relationship to the question raised by Senator Hickenlooper.

Mr. ROGERS. Yes.

Senator LAUSCHE. The probability is that the United Nations in the next 10 years will have 120 members because of the creation of new countries, especially in Africa.

MATTERS WITHIN DOMESTIC JURISDICTION

Now then, getting to the problem that confronted the Senate in 1946 on tariffs and immigration: Does the Attorney General know whether at that time the argument was raised that there is international law declaring that the right to travel is unalienable and a right existing in international law?

Mr. ROGERS. Yes: I remember reading the debates at the time, and I remember that was one of the arguments that was made by those who opposed this committee's action. I mean that was one of the fears that they expressed on it.

Senator LAUSCHE. Now then, with respect to tariffs—I do not know, I am just exploring—was the argument made that the right to trade was one that is recognized as a natural right not circumscribed by national barriers, and a right that exists under international law?

Mr. ROGERS. Well, I want to make it clear, when you ask me if the argument was made, I think the argument was made by those who favored this resolution, to that effect, yes.

Senator LAUSCHE. That was the effect of it?

Mr. ROGERS. Yes.

Senator LAUSCHE. I think that has a relationship to the principle raised by Senator Hickenlooper that in determining when the Court will take jurisdiction, it must recognize what is the existing law and

then, on the basis of existing law applied to the facts, decide whether jurisdiction is to be taken.

Mr. ROGERS. I want to say, Senator, that the American Bar Association has been very active in this field, and favors the repeal of this amendment, and the association's Section of International and Comparative Law has written a very thoughtful report on this reservation; and on the point that you raise about immigration, they say this:

In the present state of international law and apart from any restriction which might be self-imposed by treaty, matters of immigration are thus quite clearly within the domestic jurisdiction of the host state and we know of no responsible authority on which the Court could base a holding to the contrary.

Senator LAUSCHE. Does that report deal at all with the right to impose tariffs?

Mr. ROGERS. Yes; it does, Senator. I think it might be helpful, if the chairman would permit, to have this made part of the——

The CHAIRMAN. Yes. And we will have representatives of the bar as witnesses later on.

Mr. ROGERS. I see.

(See p. 281 for the report referred to above.)

REPORT OF SECTION OF AMERICAN BAR ASSOCIATION

Senator LAUSCHE. One third question: How did the Panamanian problem enter the discussion? On what theory did the opponents of the resolution in 1946 say that the Court could take jurisdiction on the Panama Canal question on the basis of international law or treaty when in truth it is a matter solely of domestic concern?

If you are not prepared to answer that now, you may be able to do so at a later date.

Mr. ROGERS. I tell you, Senator, why I am having a little difficulty in answering the questions. Because I just do not agree with the contentions that are made and I do not want to try to express them because I do not agree with them. I mean they were made, but I cannot repeat them because I do not—it is just not a fear that I have. I do not believe that that is going to be something that the Court would ever want to deal with and, as I say, this report does deal with that subject, too, this American Bar Association report. It does deal with the Panama Canal situation.

Senator LAUSCHE. It details with the three items that were uppermost in the minds of the opponents of the resolution in 1946?

Mr. ROGERS. Yes; it does.

Senator LAUSCHE. Thank you very much.

COULD ADJUDICATION OF DOMESTIC MATTERS BE DELEGATED TO THE COURT?

The CHAIRMAN. Senator Wiley would like to ask a question.

Senator WILEY. Yes. I have refrained, Mr. Attorney General, from asking questions because I understood we would have an opportunity to go into it later. But listening to the discussion, I have one or two I want to ask you about.

In the first place, could we delegate to this Court the adjudication of domestic matters?

Mr. ROGERS. You say "could we?" You say "could we do that?"

Senator WILEY. Yes.

Mr. ROGERS. The Statute prohibits it.

Senator WILEY. What is that?

Mr. ROGERS. Yes. We could not do that.

Senator WILEY. We could not?

Mr. ROGERS. That is right.

Senator WILEY. Well, in 1950, as I recall, a publication came out of the Department of State in which it was said there is no longer any real distinction between domestic and foreign affairs.

Now, if that is true—and you answered my first question that we could not delegate domestic affairs to the International Court—have you given consideration to the question then of whether or not the right process would be by constitutional amendment instead of by this kind of a proceeding?

Mr. ROGERS. Well, I just want to say that I am not sure of the context in which the State Department made that statement, but I do not believe that the State Department would ever say that there is no difference between, for legal purposes, matters of international law and domestic law.

Secondly, I think that the repeal of this reservation is the best way to solve this problem. France did it, and I think if you want to move along this road, I think this is the best way to do it.

Senator WILEY. I can give you the citation if you want it. I have no further questions.

RECIPROCAL EFFECT OF RESERVATIONS

Senator HICKENLOOPER. There is just one other question I was rather interested in, and that was the dispute between Norway and France that has been referred to heretofore. Where Norway was permitted to invoke a protective clause reserved by France—on the surface, at least, that seems to be a rather farfetched theory.

Mr. ROGERS. Well, Senator, you know that it really one of the problems that the Court has. They have what they, I think it is called reciprocity, a reciprocity clause which permits any state to claim the same reservation that any other state has. So if France sues Norway and France has a reservation, then Norway can claim the same reservation.

Senator HICKENLOOPER. On behalf of Norway?

Mr. ROGERS. On behalf of Norway. That is why any time—

Senator HICKENLOOPER. It was not decided that Norway could compel France to exercise that?

Mr. ROGERS. No.

Senator HICKENLOOPER. That reservation?

Mr. ROGERS. That is right. But any time we have brought an action in the International Court of Justice at the present time against a nation which does not have this reservation, they could claim the reservation against us, and thereby avoid the jurisdiction of the Court.

Senator HICKENLOOPER. I see. Thank you, Mr. Chairman.

Senator LAUSCHE. I think, Senator Hickenlooper, that that principle of law has its source in the English courts of chancery which said that relief will never be given to one party where under a uniform

application of the law it was deniable to another party under the same circumstances.

Mr. ROGERS. I think that is correct, Senator.

Senator HICKENLOOPER. Well, it falls into the favored-nations clauses which we have written into our treaties, too.

ADMINISTRATION POSITION IN 1946

The CHAIRMAN. Mr. Attorney General, just for the record and for your information, at the time of this original hearing, Dean Acheson was Acting Secretary of State and Charles Fahy the legal adviser, and they both appeared in support of the original resolution, not the reservation, but the original resolution.

Mr. ROGERS. That was my recollection, but I did not recall.

U.S. EXERCISE OF SELF-JUDGING RESERVATION

The CHAIRMAN. Just one other thing. In any case before the Court to which it was a party, has the United States invoked the amendment in any way? Have we ever taken advantage of it?

Mr. ROGERS. I think we have in one case, Mr. Chairman.

The CHAIRMAN. What was that case?

Mr. ROGERS. The *Interhandel* case.

The CHAIRMAN. What did it involve?

Mr. ROGERS. Well, it involves the Enemy Alien Act. We vested the General Aniline & Film Corp. It was a question between our country and Switzerland.

The CHAIRMAN. Is there, or has there developed under the arbitration treaties and from other sources, what you would consider a substantial body of international law which would apply to these cases?

Mr. ROGERS. Yes, I think so, Mr. Chairman.

The CHAIRMAN. Any other questions?

Thank you very much, Mr. Attorney General.

Mr. ROGERS. Thank you very much.

Senator LAUSCHE. I think we ought to have a compact statement prepared outlining this case in which we invoked the right not to permit jurisdiction.

Mr. ROGERS. I would be glad to do that. I think we would be very happy to do that for the committee.

The CHAIRMAN. Then we will ask you to appear further.

Mr. ROGERS. Thank you very much.

(The following information was subsequently submitted for the record by the Attorney General:)

HON. J. W. FULBRIGHT,
Chairman, Senate Foreign Relations Committee,
Washington, D.C.

MY DEAR SENATOR FULBRIGHT: You will recall that in the hearings on January 27, 1960, on S. Res. 94, the committee requested me to furnish a compact statement outlining the *Interhandel* case before the International Court of Justice, in which we invoked, with respect to one of the issues of the case, our reserved right to determine whether a dispute relates to matters which are essentially within our domestic jurisdiction as determined by us. The purpose of this letter is to furnish you such a statement.

In 1942, some 93 percent of the stock of General Aniline & Film Corp., a Delaware corporation, was vested under the Trading With the Enemy Act (40 Stat. 411, as amended, 50 U.S.C. app., sec. 1, *et seq.*), by vesting orders con-

taining formal findings that the property was owned by or held for the benefit of I. G. Farbenindustrie A.G. of Germany, an enemy national.

The vesting of this property has given rise to extensive domestic litigation and in 1957 and 1958 to some international litigation. The former will be set forth to the extent necessary for a complete understanding of the latter.

On October 1948 a Swiss holding company, known as I. G. Chemie, or Interhandel, brought suit against the Attorney General, as successor to the Alien Property Custodian, in the U.S. District Court for the District of Columbia, seeking the return of the vested stock. Plaintiff alleged it was the owner of the property and that it was not an enemy. The district court ordered plaintiff to produce for inspection certain records, admittedly relevant, which were found to be within plaintiff's control. After extensive proceedings in the hierarchy of the U.S. courts consuming over 7 years, during which only a partial production was made of the required records, the district court in 1956 finally dismissed the complaint and the court of appeals affirmed. On August 6, 1957, a petition for a writ of certiorari was filed by Interhandel with the Supreme Court of the United States.

While this petition was pending, proceedings were instituted by Switzerland before the International Court of Justice on October 2, 1957. In its application Switzerland asked for a ruling that the United States is under an obligation to restore the assets of Interhandel, or in the alternative, that the Court should determine the enemy or nonenemy character of the Interhandel assets in the General Aniline & Film Corp.; and, as a further alternative, Switzerland asked the Court to determine that the dispute should be submitted to arbitration or conciliation. On October 3, 1957, Switzerland requested the International Court to indicate certain interim measures of protection, designed to prevent the United States from selling the shares of General Aniline & Film Corp. On October 11, 1957, the United States filed with the International Court a preliminary objection which was limited to the sale of the vested stock. In the objection we informed the International Court that the United States had determined that the sale or disposition of the vested shares of General Aniline & Film Corp. is a matter essentially within its domestic jurisdiction.

Hearings were held before the International Court on October 12 and 14, 1957, on the Swiss request for the indication of interim measures. On October 14, 1957, after the conclusion of the hearings, the Supreme Court of the United States granted the petition of Interhandel for a writ of certiorari. This was brought to the attention of the International Court by a letter dated October 19, 1957, from the U.S. Ambassador at The Hague, in which was included the statement that "the Government of the United States of America is not taking action at the present time to fix a time schedule for the sale of such shares."

By its order of October 24, 1957 (I.C.J. Reports 1957, p. 105), the International Court found that there was no need to indicate interim measures of protection, in view of the judicial proceedings pending in the United States. Accordingly, it was unnecessary for the International Court to pass upon the invocation of our automatic reservation with regard to the issue of the sale or disposition of the vested shares of General Aniline & Film Corp.

In June 1958 the United States filed four preliminary objections to the jurisdiction of the International Court. Our first two objections were concerned with the question whether the dispute had arisen before the date on which our acceptance of the Court's compulsory jurisdiction had become effective; the third was on the ground that Interhandel had not exhausted the local remedies available to it in the U.S. courts; and the first part of our fourth objection was limited to the sale or disposition of the vested stock and was based on the reserved right of the United States to determine whether a dispute involves a matter essentially within our domestic jurisdiction, while in the second part of that objection we requested the International Court to rule, in the exercise of its powers under article 36, paragraph 6 of its statute, that under recognized principles of international law the wartime seizure of stock is a matter within the domestic jurisdiction of the United States. In our paper filed with the International Court we reaffirmed our pledge, previously made in the oral proceedings of October 12, 1957, that during the pendency of proceedings before the International Court we would not dispose of the proceeds of any sale of the vested shares. And, in amplification of our limited invocation of the automatic domestic reservation, we emphasized to the International Court that General Aniline & Film Corp. is an American corporation with all its physical assets in the United States; that it is engaged in production essential to the defense efforts of the

United States; that its stock was vested under the war powers of the United States, and that under the mandate of the Trading With the Enemy Act vested shares must be sold only to American citizens, unless the President in the public interest should otherwise determine.

On June 16, 1958, after the filing of these preliminary objections, the Supreme Court reinstated Interhandel's suit in the district court (*Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers*, 357 U.S. 197 (1958)). Accordingly, section 9(a) of the Trading With the Enemy Act now restrains the Attorney General from selling the vested shares. Thus, our invocation of the automatic domestic jurisdiction reservation lost its practical significance, and during the oral proceedings of November 1958 we stated to the International Court that that objection had become academic and moot. In its judgment of March 21, 1959, the International Court upheld our third preliminary objection, based on Interhandel's failure to exhaust local remedies, and disposed of the case in that manner. The International Court, therefore, did not find it necessary to pass upon our invocation of the automatic reservation.

Sincerely,

WILLIAM P. ROGERS,
Attorney General.

The CHAIRMAN. Now I wish to insert in the record statements by Senator Javits and Senator Keating, who were scheduled to appear, but were unable to do so.

(The statements referred to are as follows:)

STATEMENT BY SENATOR JACOB K. JAVITS

I wish to present a statement on behalf of Senate Resolution 94, which I have cosponsored with Senator Hubert H. Humphrey, which would repeal the Connally reservation and recognize the jurisdiction of the International Court of Justice in legal disputes arising out of the interpretation of a treaty, any question of international law, the existence of any fact which, if established, would constitute a breach of an international obligation, and the nature and extent of the reparation to be made for the breach of an international obligation.

Out of World War II there developed among the American people a determination to seek a peaceful world order based on the constant cooperation of freedom-loving nations. The United States took the lead in erecting a structure of international relations out of the establishment of permanent institutions which would develop methods of harmonizing the interests and actions of the world powers. It was expected that the strong nations of the world would lead the way, by their example, to international justice, and that by a process of evolution the adherence of these sovereign states to a minimum code of international behavior would acquire the force of law.

In his state of the Union message in January 1959, President Eisenhower referred to this objective and said: "It is my purpose to intensify efforts during the coming 2 years to the end that the rule of law may replace the obsolete rule of force in the affairs of nations."

In April of that year, Vice President Nixon declared: "The time has now come to take the initiative in the direction of establishment of the rule of law to replace the rule of force."

This concept was clearly enunciated in 1946 by the then Under Secretary of State, Dean Acheson, who said:

"International order * * * resembles domestic order in resting upon a basis of law, and thus in turn rests upon the confidence and support of people. The processes in the international society are different because of the sovereign character of the entities that comprise it; it depends to a much greater degree on good faith and intelligence. But the central role of the judiciary is in both cases the same—it is to make the law a living and vital factor."

He was referring to the International Court of Justice which had been created in 1945 under article 7 of the United Nations Charter as one of the "principal organs" of that body, on a level in prestige and authority with the Security Council and the General Assembly. Thus with the establishment of the World Court, the United States had forged an instrument of extraordinary potential for effectuating the rule of law in place of the rule of force in the conduct of international relations. Since that time, 30 nations have accepted the compulsory jurisdiction of the World Court, without reservation. The United States, how-

ever, although a member of the Court, has reserved the right, under the Connally assertion of 1946, to determine for itself "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America," thus withdrawing such disputes from the jurisdiction of the Court and in effect leaving the United States free to decline to go before the Court in an international legal dispute in which it is involved. Reservations in substantially the same terms were made by France, India, Liberia, Mexico, Pakistan, Sudan, and the Union of South Africa. The U.S.S.R. and its bloc of satellite nations do not accept the jurisdiction of the Court.

It is noteworthy that in the years between 1919 and 1939 more international agreements were concluded to settle international disputes than at any prior time in the history of the world. Up to 1928, over 130 such treaties were signed, exclusive of those between the U.S.S.R. and its satellite states, most of them incidentally after 1924. This is significant because it offers eloquent testimony to the mounting sentiment among the nations of the world for peace and security.

It is highly fitting, therefore, that the United States which wears the mantle of leadership in the effort to achieve peace and security through the rule of law should place the full weight of its prestige behind the World Court by accepting its jurisdiction without the Connally reservation. Toward this aim, I strongly urge the adoption of Senate Resolution 94.

The Senate of the United States can also demonstrate its determination to replace the rule of force by the rule of law by encouraging the inclusion of a provision in every treaty or other international agreement which we negotiate calling for the impartial settlement of disputes and disagreements by the International Court of Justice. I believe that the Senate, in its constitutional role of advising the President in his treaty-making functions, would give effect to U.S. leadership by adopting a resolution which I have introduced; namely, Senate Resolution 146, stating its sense that this be done.

STATEMENT OF SENATOR KENNETH B. KEATING

Mr. Chairman, I want to thank you for this opportunity to testify, and I want to commend the committee for scheduling these hearings on the Connally amendment.

Just a few weeks ago I made a speech on the floor of the Senate in which I said that the Senate must not shirk its duty in respect to revision of the Connally amendment if our country is to play its proper role in the advancement of the rule of law in international relations. Since then, I have heard from many of my constituents on the subject. There are understandably divided feelings on this issue. What troubles me are the misapprehensions with which many of the critics of revision approach this matter. I want today to discuss some of these erroneous assumptions with the committee.

The most common assertion of the opponents of revision is that the present amendment is necessary to keep the International Court of Justice from exercising jurisdiction over domestic matters. This contention completely overlooks the numerous other safeguards against intrusion into our domestic affairs which would remain even if the veto power were deleted from the U.S. declaration of adherence.

The most important of these is the provision in the United Nations Charter declaring that nothing therein "shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present charter * * *." Another unmistakable limitation is the language in the remainder of the U.S. declaration of adherence stating that the declaration shall not apply to "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America."

The committee may wish to consider as part of its recommendations an addition to this language specifying borderline matters which we consider to be within our domestic jurisdiction, such as immigration, tariffs, and changes in the value of currency. Professor Sohn of Harvard University, in an article in the current issue of the American Bar Association Journal, points out that such matters have traditionally been considered by the United States as matters of domestic jurisdiction, while they are considered to have "important international consequences" by other nations. There may be other subjects of this nature which would be added from time to time, or the committee might consider

a general reservation of matters "which have been traditionally considered by the United States as matters within the domestic jurisdiction of the United States," to borrow Professor Sohn's language.

Even such a revised declaration would remove the most obnoxious feature of our present declaration—its self-judging language, and would be an unmistakable forward step in our efforts to promote an international rule of law.

But apart from this and beyond the broad provisions of the United Nations Charter and the remainder of the U.S. declaration which I have discussed, there are still other limitations to prevent the International Court from sticking its nose into our domestic affairs. Article 36 of the Statute of the Court specified that the Court's jurisdiction shall apply only to "legal disputes" concerning "treaties," "any question of international law," "a breach of an international obligation" and "the nature or extent of the reparation to be made for the breach of an international obligation." A report of the American Bar Association's Section on International and Comparative Law explains that "since the Court's 'compulsory' jurisdiction is limited to international 'legal' disputes, no reservation is necessary to avoid consideration by the Court of political or sociological disputes. The Declaration of Human Rights, for example, is only a 'declaration' of aspirations, not a treaty. Since it created no obligations, and made no law, it could not be a proper basis for a claim before the Court. Nor could the U.S. Constitution or its laws be the basis for such a claim because they create no international law or obligations."

There can be added to these "safety" factors against interference in domestic matters, the right of the United States to terminate or amend any revised declaration on 6 months' notice, and the right as a permanent member of the Security Council to veto any attempts to enforce an unwarranted judgment against the United States.

Let me say that I would oppose any cession of domestic jurisdiction to a world court. It is clear to me, however, that no such surrender of sovereign authority is contemplated. The decisions of the International Court of Justice could in no way alter our Constitution, the laws we have enacted thereunder, or any of the liberties and privileges of our fellow Americans. If the situation were otherwise I would not be here urging revision of the Connally amendment, and I do not believe that any committee of this Senate would give its support to such an effort.

Another common assertion is that the International Court of Justice is under the control of the Communists. This, of course, is simply untrue. Only 1 of the 15 judges of the Court is from the Soviet Union and only 1 other is from an Iron Curtain country, Poland. The other 13 judges come from Argentina, Australia, Free China, France, Greece, Mexico, Norway, Pakistan, Panama, the United Arab Republic, the United Kingdom, the United States, and Uruguay. Indeed, under the Statute of the Court no two judges may be nationals of the same state.

According to experienced observers, these judges have acted with a high degree of impartiality. It has been said by one commentator that "the scales of justice at the international level have generally been balanced with as pleasing a degree of impartiality as ever graced an American courthouse." (Samore, "National Origins v. Impartial Decisions: A Study of World Court Holdings," 34 Chi.-Kent L. Rev. 198 (1956)). In its appraisal of the record of the World Court, the American Bar Association committee concluded that the Court "has acted with conservatism and has given more reason for more confidence in its judicial standing, scholarship, and impartiality than has in fact been generally accorded it by the various nations."

It must be conceded that the personnel of the Court can change. However, all new members must be elected by a majority of the General Assembly and the Security Council. Unless both these groups fall under Communist domination, there is little danger that the Court will fall under such domination. And if, heaven forbid, the United Nations became a Communist tool, we would not long remain members of either that body or the Court.

Another oft repeated theme of some of the opposition mail I have received is that the United States has nothing to gain by strengthening the International Court of Justice. This simply is not in accord with the facts.

First of all, under article 36 of the Statute of the International Court of Justice any nation has the right to invoke against the United States any veto power we reserve. This is because the Statute of the Court provides that the obligations assumed by any nation thereunder shall exist only in "relation to

any other state accepting the same obligation." The U.S. assertion of the right to be judge in its own case, therefore, has given other member states a reciprocal right in any case to which the United States is a party.

This reciprocity hurts our interests more than the reservation helps them. The report of the American Bar Association's section of international and comparative law points out that "This [reservation] cripples the United States more than others because its foreign interests are the largest. From a strictly selfish, economic point of view, the United States should be doing all it can to strengthen international law and to advance, not discourage, means of enforcing international obligations."

In short, since we can reasonably expect to be plaintiff more often than defendant in cases before the International Court of Justice, we will be victim more often than beneficiary of the veto power.

This is well illustrated by a case cited in one of Roscoe Drummond's columns last year. In that case, the United States attempted to hale the Soviet Union before the International Court of Justice for damages caused by shooting down an unarmed American plane over the Sea of Japan. As Drummond explains, "Moscow blandly denied the Court's jurisdiction on the ground that it was a 'domestic matter.' The Court had to agree on the premise that so long as the United States reserved to itself the right to decide when an issue was 'domestic,' the right must be conceded to all other countries."

France, which followed the precedent of the United States, had a similar experience in a suit which it brought against Norway. In that case Norway, which had no such reservation in its declaration of adherence, was allowed to invoke the French reservation on the grounds of reciprocity and thereby to defeat the French claim. It is noteworthy that France has since withdrawn its reservation.

Equally important as these practical considerations, is the tremendous prestige which would inure to the United States in the world community by a step which demonstrated our confidence in the principles of international justice. The advancement of the rule of law in the settlement of international disputes is a goal uniquely related to our American heritage. Our land was settled by people escaping tyranny. Our Government was established and nurtured by men dedicated to freedom and justice. While we have not yet achieved equal justice for all our citizens, we have made constant progress. In our Nation, there is a passion for justice and a feeling almost of reverence toward the law.

In my opinion, one of the reasons we have engaged Russia in a cold war is to protect and perpetuate our heritage of freedom under law. This ideal of a rule of law gives an almost spiritual purpose to our struggle against communism. If Russia and its ally, Red China, were ever victorious in the cold war—one of their first measures would be to destroy the rule of law. I believe we have a duty to future generations of the world to preserve and foster the rule of law in the settlement of disputes among nations as well as people. This is a sacred mission stemming from our inheritance of the blessings of freedom and justice.

Mr. Chairman, I hope that the committee will recommend to the Senate a revision of the Connally amendment which will be entirely consistent with our dedication to the principles of international justice.

The CHAIRMAN. The next witness is Herbert W. Briggs, professor of international law at Cornell University.

Professor Briggs, will you come forward, please.

STATEMENT OF HERBERT W. BRIGGS, PROFESSOR OF INTERNATIONAL LAW, CORNELL UNIVERSITY

The CHAIRMAN. Professor Briggs, under our limitation of time, I wonder—I know you have a very thorough prepared statement—could we introduce that into the committee's record in toto and would you summarize it for us so that we might have some time to ask you questions.

Mr. Briggs. I would be most happy, Mr. Chairman.

Mr. Chairman and members of the committee, in this statement I am expressing my own personal views, although I am president of the American Society of International Law.

OPPOSITION TO ALL RESERVATIONS

I would like to summarize, in advance, the four points I wish to make, namely, I favor the withdrawal of reservations (a), (b), and (c)—all of them—on page 2 of Senate Resolution 94, lines 10 to 20, inclusive, and I am in favor of the elimination or the modification of the two words “hereafter arising” at the top of page 2.

I agree with the President of the United States, the Secretary of State, and the Attorney General, that it is high time for the United States to withdraw the self-judging reservation which is contained in the words "as determined by the United States."

INCOMPATIBILITY WITH STATUTE OF THE COURT

I indicate here that I believe it to be incompatible with the Statute of the Court in the sixth paragraph of what it says that "In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."

That provision of the Statute, Mr. Chairman, I believe, is applicable to the United States whether we appear before the Court under this declaration or voluntarily. There is nothing optional about the sixth paragraph of article 36; it is part of the Statute, which is a treaty, to which the United States is a party. And in this light, the Connally amendment appears to be a reservation not merely to the declaration which we imposed accepting jurisdiction, but also it appears to be an attempt to modify unilaterally the terms of a treaty to which we as well as 84 other states are parties.

DISCRETIONARY NATURE OF RESERVATION

I find the domestic jurisdiction reservation, the preemptory one we have, also unfortunate because of its discretionary nature. We reserve the right, in telling the Court we accept their compulsory jurisdiction, to tell them when they can exercise this jurisdiction, and this has led two judges on this Court—and they come from systems of law with which we are familiar, the English Sir Hersch Lauterpacht, and the Australian judge, Sir Percy Spender—to reach the conclusion that the United States has never really accepted compulsory jurisdiction if we reserve the right every time we are sued to make the determination whether or not to accept jurisdiction.

This was not the majority view, Mr. Chairman, nor is it my view. The United States has appeared before the Court seven times as applicant or plaintiff, and we have been sued or appeared as defendant in four cases since 1946. We have invoked our declaration accepting compulsory jurisdiction both as plaintiff and as defendant.

If doubt still persists in the minds of some judges, I think we should remove the cause of the doubt.

INVOCATION OF RESERVATION IN THE INTERHANDEL CASE

I come now to the lessons of experience, and I wish to make two points.

First, that our reservation, our domestic jurisdiction reservation has not served us well in practice, and, second, that it is potentially more dangerous to our interests than protective thereof.

It has been invoked by the United States twice in two aspects of the same case, the *Interhandel* case.

We won both cases, the United States won both cases, despite our invocation, but not because of our invocation. That was not the ground of the decision in either case.

In one case, in the *Interhandel* case, the Court ruled that there was a lack of urgency. We had asked for something in the nature of injunctive relief which they call the interim measures of protection, and the Court found there was no urgency because the matter was pending in the U.S. courts.

In the second phase, the Court did not base its dismissal of the Swiss claim against the United States on our reservation. They dismissed it on the ground that the *Interhandel* Co. had not exhausted their local remedies in the case, which is still pending in the U.S. court.

CONCLUSION THAT RESERVATION IS NOT AUTOMATIC

Well, I reach the conclusion, which seems to me inescapable, that our so-called preemptory domestic jurisdiction reservation is not really automatic. Despite our invocation of the reservation on two occasions, the Court sub silentio, that is, without going into details or expressing the reason for its view, found it could take jurisdiction to consider the granting of interim measures, and they decided not to grant them.

Second, it took jurisdiction to consider whether the claim was admissible, and found on the facts that it was inadmissible.

I submit that the Court was entirely justified in doing this under its Statute.

So the point I am making here is that the reservation which we have invoked twice has not been particularly useful to us.

The *Norwegian Loans* case has been mentioned several times this morning, and, of course, that is a boomerang which nonsuits, as plaintiff, the State which envisages using the device as a defendant. We are particularly vulnerable in the United States.

PROVISIONS IN ECONOMIC COOPERATION AGREEMENTS

I call to your attention Public Law 472, 80th Congress, under which we have concluded at least 19 economic cooperation agreements with foreign countries, and some of these countries have accepted the jurisdiction of the Court under declarations such as the one we are proposing to make. Some have not, but each one of these treaties contains a clause under which either party can sue the other. But there is an additional provision that this is done subject to the declaration, which means subject to the reservation of domestic jurisdiction as determined by the United States.

We have perhaps a greater stake than the other party. We are investing money abroad. We have citizens to protect and any time we bring an action as plaintiff, we could have this thrown right back at us under the reciprocity rule which the Court is required to apply.

RESERVATION RELATING TO DOMESTIC JURISDICTION

I am thoroughly in favor of the Humphrey resolution, but I would be willing to go beyond it, and delete paragraph (b) entirely. It may

be doubted, I believe, whether we need any domestic jurisdiction reservation. Of the 39 states at present accepting the compulsory jurisdiction of the Court, 25 of them have deposited declarations which do not mention domestic jurisdiction, and the reason was stated by Attorney General Rogers. May I quote him:

The Court's statute explicitly limits its jurisdiction to international legal disputes. By the plain terms of its grant, it has no jurisdiction over domestic matters.

I therefore favor, as I said, the Humphrey resolution and would be willing to go beyond it.

SUGGESTED DELETION OF WORDS "HEREAFTER ARISING"

Now, on the second issue, this matter was mentioned in the report by Assistant Secretary of State Macomber to Senator Fulbright and it deals with the words "hereafter arising."

If the Senate adopts this resolution, it will require the deposit by the U.S. Government, that is to say, by the Executive, of a new declaration accepting the compulsory jurisdiction of the Court, and it contains the words "hereafter arising," which will thereby automatically exclude any disputes arising before the date of deposit of the new declaration. And I think it would be most unfortunate, if, for example, a dispute arose today, and it came up in 1961, it might be excluded because the words "hereafter arising" excluded it.

Only France and South Africa follow the policy when renewing declarations, when making new ones, of keeping up the words "hereafter arising." I might give one illustration.

In 1921 the Netherlands Government accepted the jurisdiction of the Court for 5 years for all future disputes. In 1926, when that had expired, they did it again for all future disputes and then kept on doing this until 1946, thereby excluding disputes which might have arisen the day before, although contemporaneously they could have been submitted.

In 1956 they carried the date back to 1921, the date when they first accepted the jurisdiction of the Court.

Now, why is this important? Because our date can be used against us again. Under the reciprocity rule, if we deposit a declaration dated, say, 1960, and bring an action, and the defendant State can prove that the case, the dispute really arose in 1959, we are out; if we leave our date of 1946, we are in.

RESERVATION RELATING TO MULTILATERAL TREATIES

The third issue, I shall not press, but it seems to me that the reservation—

The CHAIRMAN. Mr. Briggs, you have only 1 minute left.

Mr. BRIGGS. I shall skip that one, which seems to me to serve little purpose.

The other one I feel very strongly about, that the multilateral treaties reservation does not meet any problem at all. It seems to me what we are trying to do here—I am not quite sure what we are trying to do—but what we do say here is that we exclude from the jurisdiction of the Court certain disputes arising under a multilateral treaty un-

less we consent. In that case, our consent is the basis, and we are not accepting compulsory jurisdiction. The special agreement is the basis, and the other thing is under (1), all parties to the treaty affected by the decision, it seems to me we are saying, for example, if we are sued by a state over the interpretation of the United Nations Charter, that every member of the United Nations would have to be codefendant before we have accepted the jurisdiction of the Court.

ELIMINATION OF ALL RESERVATIONS PROPOSED

Now, President Eisenhower has said he is hoping for a similar acceptance of the Court's jurisdiction by every member, and it is my hope that the resolution which is adopted will be a good model.

The CHAIRMAN. We would like to ask you some questions.

Senator GREEN.

Senator GREEN. No questions.

The CHAIRMAN. Senator Wiley?

Senator WILEY. None.

The CHAIRMAN. Senator Sparkman?

Senator SPARKMAN. Doctor, you would remove all of the reservations?

Mr. BRIGGS. I believe it would be perfectly safe.

Senator SPARKMAN. And yet they simply state principles that you contend would be applicable even if they were out?

Mr. BRIGGS. That is correct.

Senator SPARKMAN. Is that not true?

Mr. BRIGGS. Well, not to the extent of the multilateral treaty reservation.

Senator SPARKMAN. But the others would?

Mr. BRIGGS. Yes, the others would.

SELECTION OF JUDGES OF THE COURT

Senator SPARKMAN. Doctor, how are these judges selected?

Mr. BRIGGS. These judges are elected according to the Statute of the Court by the General Assembly and the Security Council by majority vote. There is no veto in the Security Council, acting separately.

Senator SPARKMAN. How are they nominated?

Mr. BRIGGS. They are nominated, as far as the United States is concerned, by the four men who constitute the panel of the old Hague Court of Arbitration. This is never a court. In 1899 they got a list of names, and some 30 or 40 states have named four citizens who make these nominations. Now, the states which are not parties to the Hague Court, I suppose the governments appoint the commissions to do it, but in the United States this is made by a commission which includes Justices Peck, Webster, Herman Phleger, and one other person. They will make the nomination to the United Nations and then the elections take place in the United Nations.

Senator SPARKMAN. And the United Nations is limited to the ones nominated by this method?

Mr. BRIGGS. They can vote only for those nominated on the list, yes, sir.

Senator SPARKMAN. Is the term for—

Mr. BRIGGS. The term is for 9 years and is renewable upon another election.

Senator SPARKMAN. That is all, Mr. Chairman.

The CHAIRMAN. I do not understand that nomination procedure. Is this in the law or—

Mr. BRIGGS. This is in the Statute, the treaty. I have it right here and I will quote it.

The CHAIRMAN. How do they describe the people who nominate for us?

Mr. BRIGGS. Article 4 deals with elections. Article 5 says at least 3 months before the date of election, the Secretary General shall address written communications to the members of the Permanent Court of Arbitration—that is, the national groups, and they may nominate four persons—not more than two of whom shall be of their own nationalities.

It is a little complicated and cumbersome, but the nominations are not made from the floor of the U.N. They come from the individual countries.

The CHAIRMAN. Well, though, can our Government change that or nominate from some other procedure without—

Mr. BRIGGS. We cannot change the provisions of the Statute, which is a treaty, without the consent of other parties.

The CHAIRMAN. But those four men you have mentioned are not named in that, are they?

Mr. BRIGGS. They are not named here.

The CHAIRMAN. Who are they named by—the President?

Mr. BRIGGS. They are named, as I understand it, by the President of the United States.

The CHAIRMAN. They are his nominees who nominate our nominees?

Mr. BRIGGS. Yes, sir.

The CHAIRMAN. I see.

Senator Hickenlooper?

LINE BETWEEN INTERNATIONAL AND DOMESTIC MATTERS

Senator HICKENLOOPER. Professor Briggs, can we clearly define the line between what matters are international and what are domestic?

Mr. BRIGGS. In my opinion?

Senator HICKENLOOPER. Yes.

Mr. BRIGGS. I think the matter is relative. Whether or not a matter falls within the domestic jurisdiction of a state depends upon whether the state has incurred any international obligations. You start with immigration; it is purely a domestic question, as the Attorney General said, until we conclude a treaty on the subject. Then it ceases to be.

Senator HICKENLOOPER. Why is it a purely internal question?

Mr. BRIGGS. Because international law does not regulate. It is a question of immigration.

Senator HICKENLOOPER. But suppose the International Court said it was?

Mr. BRIGGS. The Court would not say that. I am quite convinced.

Senator HICKENLOOPER. How do you know the Court would not say that?

Mr. BRIGGS. I have known a great many of the judges over a great many years. They are men of very high principle, and I would say very learned in the law.

We start from the approach when a question comes up, "Is this an international question?" They look first of all to see whether there are any customary rules of international law. If not, are there any treaties? If not, it is not regulated by international law. It is therefore a domestic question. That is the approach.

Senator HICKENLOOPER. Well, am I to understand then that this amounts to a very broad twilight zone in which there is no definition except as the judges make it?

Mr. BRIGGS. As the Court decides. It is a question, I suppose, of whether you have faith that the Court will apply the law; they are not dragging it out of the air, Senator.

Senator HICKENLOOPER. Then we are going on faith, is that it, in great measure?

Mr. BRIGGS. I have faith in the Court, yes, but that is not——

Senator HICKENLOOPER. We are going on faith that the Court will be sensible?

Mr. BRIGGS. I think we can go on experience, also; the record of the Court. They have leaned over backward not to infringe on domestic jurisdiction of states.

Senator HICKENLOOPER. I am perfectly willing to concede there would be great difficulty in getting a definition of what are internal affairs and what are international. But I am wondering if there is a mechanism by which we could define it more clearly.

Mr. BRIGGS. Well, the mechanism is the application of this test: Is this a matter on which a state has incurred any international obligations? If so, it ceases to be domestic.

ISSUES INVOLVING THE PANAMA CANAL

Senator HICKENLOOPER. All right. One of the chief examples which has been referred to year in and year out, and this matter has been up before, is the Panama Canal. Panama is making certain claims, let us say, about the flying of the flag, along with the flag of the United States, in the Canal Zone. Now, a lot of people think that is purely a domestic matter. But as I recall it, the Panama Canal Zone was set up by international treaty.

Mr. BRIGGS. That is correct.

Senator HICKENLOOPER. Is that an international matter?

Mr. BRIGGS. I think if the question arose before the Court as to whether Panama had the right to do this, it obviously would not be a domestic matter; but you see what might happen today.

Senator HICKENLOOPER. In other words, you mean you think it is obvious that the Court would take jurisdiction of it?

Mr. BRIGGS. It might take jurisdiction of a dispute which arose in order to interpret the treaty, but the finding it could make would only be, it seems to me, in accordance——

Senator HICKENLOOPER. There is a difference between the finding of and taking jurisdiction.

Mr. BRIGGS. But, you see, if we sued Panama today, Senator, Panama has accepted the jurisdiction of the Court without reservation. The first thing they would say is, "we invoke the Connally amendment."

If we withdraw this, she lacks that defense. If we make the claim and the Court would find it is not exclusively within Panamanian jurisdiction because there is a treaty which regulates jurisdiction, it certainly could include the right to fly the flag.

Senator HICKENLOOPER. Well, it is not a question of what the Court would decide; it is a question of whether the Court would have original jurisdiction of this matter under these agreements.

Now, as I said a moment ago, I think there is a lot of public opinion in this country that feels the matters involving the Panama Canal are domestic.

Mr. BRIGGS. Well, may I ask domestic who, Panama or the United States, because that may be part of the issues.

Senator HICKENLOOPER. Well, that is exactly what you get into. But the same act, the same act which created the zone and whatever the situation is there, was established as a result of the treaty. This resolution specifically refers to the interpretation of treaties. That is, even with the reservation that was put in by the Senate at the time of the adoption. So I take it that it is your view that if Panama wanted to take us into the International Court on questions of this kind, a matter of interpretation, residual right, sovereignty, and other matters, that probably the Court would have jurisdiction.

Mr. BRIGGS. That is correct; they would have jurisdiction to look into it since the issue turns on the interpretation of the treaty.

Senator HICKENLOOPER. I see. I think that is all.

BACKGROUND OF WITNESS

The CHAIRMAN. Senator Lausche?

Senator LAUSCHE. Yes, I have a few questions.

First of all, I would like to get into the record a little more detailed recitation of your background. How long have you been connected with Cornell University?

Mr. BRIGGS. I have been since 1929. I have taught 31 years at Cornell University.

Senator LAUSCHE. Do you give your full time to Cornell?

Mr. BRIGGS. Yes. I am on the faculty of the law school and also in the department of government, political science.

Senator LAUSCHE. And you are the editor in chief of the American Journal of International Law?

Mr. BRIGGS. That is correct.

Senator LAUSCHE. And president of the American Society of International Law?

Mr. BRIGGS. That is correct.

Senator LAUSCHE. Now, you have taught international law for 31 years; is that correct?

Mr. BRIGGS. At Cornell, and before that at Johns Hopkins and Oberlin.

ISSUES RELATING TO IMMIGRATION

Senator LAUSCHE. Now, based upon the knowledge which you have acquired in studying and teaching the subject, you unequivocally declare that the right to control immigration and emigration lies solely within the province of an individual country and is not controlled by international law?

Mr. BRIGGS. Unless we conclude a treaty on the subject. I would say unless we conclude a treaty on the subject; yes, sir.

Senator LAUSCHE. The only thing then, in your opinion, which would bring the question of the right to control immigration within the jurisdiction of the International Court of Justice would be when a litigating party showed that a treaty was in existence among the litigants?

Mr. BRIGGS. That would be my view.

Senator LAUSCHE. Presently, international law does not at all govern the right of immigration?

Mr. BRIGGS. That is correct.

ISSUES INVOLVING RIGHT TO TRAVEL

Senator LAUSCHE. Mr. Briggs, are you familiar with the principle that has been advocated by some that the right to travel is an inalienable right?

Mr. BRIGGS. I have heard that expressed, and also the resolution, which has no legal force, of the United Nations, universal declaration of human rights, has expressed that view, but it has no legal force and does not convince me that it has changed the law.

Senator LAUSCHE. It does, however, have a relationship between the moral right of the individual and the soundness of the present law which says that the right to travel shall be controlled only by nations within themselves?

Mr. BRIGGS. I think, if I understand you, your question is directed toward the policy of a particular country.

Senator LAUSCHE. No. I am leading to this: There are those who declare that the right to travel is a natural right, inalienable, and that declaration has been supported by the United Nations.

Mr. BRIGGS. Yes.

Senator LAUSCHE. What would be the situation if the International Court of Justice at some future time exploring international law would say that we were in error in holding that this is a domestic question, and that the true law and the moral law and the natural law is that the right to travel shall be inviolate?

Mr. BRIGGS. Well, if they held it, they would hold it, but I cannot imagine their finding it in view of all the evidence that a state can control its own immigration policy.

Senator LAUSCHE. Well now, then——

Mr. BRIGGS. It would be a bad judgment if the Court did.

Senator LAUSCHE. That is, you feel they would not do that?

Mr. BRIGGS. That is correct.

Senator LAUSCHE. Not passing upon the propriety of what was done by our Supreme Court, is it not a fact that they made declarations of what the law of our land is recently that are in conflict with the declarations made by preceding courts on the identical question?

Mr. BRIGGS. By "they" do you mean the International Court of Justice?

Senator LAUSCHE. No. Our Supreme Court.

Mr. BRIGGS. Our Supreme Court. I do not know that I am competent to pass on that, express an opinion.

Senator LAUSCHE. Well, the International Court of Justice, however, would have the right to make a new declaration of what the international law is on the subject of the right to travel?

Mr. BRIGGS. If a question came before them, the Court can make no declarations on anything except in a litigated case, and if the issue arose before them as to whether a state had or had not the right, absolute control over immigration, the Court would have to pass on that point, and it would look for treaties.

Senator LAUSCHE. Well, what I had in mind is this: If you concede that the Court has a right to explore international law as it is recorded and to consider what the United Nations declared to be the natural right to travel, and if you recognize that the International Court would have the power to redeclare the international law on immigration—would it not be well to insert here that it shall take jurisdiction in all disputes hereafter arising concerning any question of existing international law?

Mr. BRIGGS. I think, Senator, that would be most unfortunate, because international law is dynamic. Every time we make a new treaty, we incur new rights and new obligations, and even the law, your customary international law, evolves; the whole issue of the Continental Shelf, there was no international law on it 15, 20 years ago. At the present time I think it is rather clearly established that littoral state has jurisdiction over the resources of the shelf, and I have a feeling that you would stop the clock with such an amendment.

Senator LAUSCHE. Then, if you declare international law to be dynamic and susceptible to modification to meet the demands of the contemporary times, then you concede that the International Court of Justice could redeclare the law?

Mr. BRIGGS. No, sir; I do not. Because the Court cannot make the law. The Court applies the law which it finds. If there is an evolution, it certainly would take into consideration the trend. But the Court cannot bind or loose, insofar as creating rules of international law where none existed before or reversing one that existed before. The law comes from the practice of states.

ISSUES INVOLVING TARIFFS

Senator LAUSCHE. Now, let us get to the subject of the right to impose tariffs for the protection of the domestic economy.

Mr. BRIGGS, would you declare the law as you understand it to be now on an international basis on the right to impose tariffs?

Mr. BRIGGS. As far as tariffs are concerned, it is exclusively domestic, a domestic question, until we have incurred international agreements such as we did under the Hull trade agreement program or the GATT treaties. In the absence of any treaty, the height of our tariff was a matter of domestic concern.

Senator LAUSCHE. In the reported discussions on the subject of whether a nation solely has the right to declare its tariff policy, has there been a contrary view advocated?

Mr. BRIGGS. Not that I know of. I can think of no view, in the absence of a treaty again.

Senator LAUSCHE. Yes.

Mr. BRIGGS. Yes.

Senator LAUSCHE. That is, as far as you know, at no time has any author of international law, in citing the decisions of the past, ever urged that the right to impose tariffs does not lie solely within the nation that is dealing with the problem?

Mr. BRIGGS. I cannot think of any.

ISSUES INVOLVING THE PANAMA CANAL

Senator LAUSCHE. Now, then, can you tell us what the factors were with respect to the Panamanian Treaty on the Panama Canal that provoked the dispute here when the question was before us in 1946? I do not know what they are and I cannot see how the question arose.

Mr. BRIGGS. I am not quite certain what Senator Hickenlooper had in mind as far as the reference to 1946 is concerned. The issue he asked me had to do with the right of Panama to fly the flag in the zone, and I say that is a question which is governed by the treaty, because Panama by treaty gave us all right, jurisdiction, and so forth, that was within the zone and therefore it seems to me it is up to us whether or not the right to fly the flag exists.

But as far as the jurisdiction of the Court is concerned, if Panama brought the case before the Court, the Court would have to take jurisdiction in order to examine the treaty on it.

Senator LAUSCHE. Yes.

LIMITATIONS ON JURISDICTION OF INTERNATIONAL COURT

What is your view about Senator Hickenlooper's proposition that the jurisdiction of courts in our modern day is usually defined and limited by specific declarations of law?

Mr. BRIGGS. I think that that is true also of the International Court of Justice. The jurisdiction of that Court is limited by its Statute to cases which the parties bring before it under the first paragraph of article 36, or in cases which they accept the compulsory jurisdiction as listed in this resolution, page 2, lines 3 to 8, these legal questions.

Now, there are two limitations therefore on the jurisdiction of the Court. One, the Court cannot take jurisdiction over the parties without their consent. That applies to both parties.

Second, it lacks jurisdiction over the issue unless it is an issue which falls within the interpretation of a treaty, any question of international law, or (c), or (d).

That excludes, in my judgment, matters of domestic jurisdiction, even in the absence of a reservation.

It also excludes political questions, because it says, "all legal disputes of an international nature." Therefore, I conclude that there are two limitations written right into the Court's Statute which govern its performance, on the parties and on the substance of the dispute.

Senator LAUSCHE. Well, I think that is the normal approach in determining jurisdiction; one, jurisdiction of the parties.

Mr. BRIGGS. Yes.

Senator LAUSCHE. And, two, jurisdiction of the *rem* or the issue?

Mr. BRIGGS. Yes, the *materia* and *persona*.

SELECTION OF JUDGES OF THE INTERNATIONAL COURT

Senator LAUSCHE. Now, getting to the question of the selection of these judges, is that not a rather cumbersome process that now exists?

Mr. BRIGGS. Very much so.

Senator LAUSCHE. And you would agree that it is rather vague?

Mr. BRIGGS. I do not think it is vague, no. I expressed it vaguely, perhaps. If you read the treaty, I think it is quite clear, point one, the Secretary General asks all members of the United Nations or groups in these member countries to make nominations. The nominations come in, a list is made, and a vote takes place, one, in the Assembly, two, in the Council, and they compare lists to see who gets a majority.

Senator LAUSCHE. I did not understand it to be that way. Do all of the members of the United Nations——

Mr. BRIGGS. All members of the United Nations have a right to make nominations, but as stated here in the Statute, it is not the member states which make the nomination but the national group within that state.

Senator LAUSCHE. That is what I think is the confusing point.

Mr. BRIGGS. It is. It refers in each case to national groups: some of them under the old Permanent Court and some of them national groups which are created. Certainly, new states like Indonesia are not party to the old Hague statute; therefore, a nomination from Indonesia comes from a group appointed somehow by the Government of Indonesia. I have no question in my mind that the Government, the executive branch, has a voice in what the groups say, but it is not a determinative voice under the Statute.

Senator SPARKMAN. Will the Senator from Ohio yield there?

Senator LAUSCHE. Yes.

Senator SPARKMAN. That is covered by article 4, section 2, of the statute. It says:

In the case of members of the United Nations not represented in the Permanent Court of Arbitration, candidates shall be nominated by national groups appointed for this purpose by their governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

Mr. BRIGGS. Yes.

Senator SPARKMAN. If they are not members of the Hague Permanent Court of Arbitration, then how do they appoint them under such conditions?

Mr. BRIGGS. A new state which is not a party to the old Hague Convention simply appoints an ad hoc group.

Senator SPARKMAN. So the judges then are really nominated one way or the other by all member nations of the United Nations?

Mr. BRIGGS. That is correct.

Senator SPARKMAN. Thank you.

INTERHANDEL CASE

Senator LAUSCHE. I would now like to go to this case in which our Government invoked its right not to be subject to the jurisdiction of the Court. Do I understand that our Government declared that this

was a matter of domestic concern and therefore the Court did not have jurisdiction?

Mr. BRIGGS. That is correct. We deposited preliminary objections to the jurisdiction of the Court, invoking the Connally reservation in saying, and I quote from our document deposited with the Court:

We ask the Court to judge and decide that there is no jurisdiction in this Court to hear or determine any issues raised by the Swiss application—

which was in the *Interhandel* case—

for the reason that the sale or disposition of the General Aniline & Film Co. shares has been determined by the United States of America to be a matter essentially within its domestic jurisdiction.

In other words, we challenged the jurisdiction of the Court.

Senator LAUSCHE. But the Court did not then proceed to decide the jurisdictional question by itself?

Mr. BRIGGS. On that basis. We also deposited four other objections to the jurisdiction of the Court, and the Court chose the basis, namely, the failure of the Swiss *Interhandel* Co. to exhaust remedies; they chose that as the basis for their finding that the Swiss claim must fail.

We won that case; Switzerland held not to—

Senator LAUSCHE. But the Court then made no direct ruling on the issue?

Mr. BRIGGS. On that point.

Senator LAUSCHE. On the issue as to whether this was a question of domestic concern?

Mr. BRIGGS. That is correct.

Senator LAUSCHE. It proceeded to consider all of the issues involved and decided the case on one difference—

Mr. BRIGGS. Well, may I say, in saying they considered all of the issues, they never got to the merits. They never reached the merits. The merits have never been discussed by the Court. We stopped them at the threshold. The United States introduced five objections to the jurisdiction of the Court.

Senator LAUSCHE. Yes.

Mr. BRIGGS. So the Court decided, all right, the United States wins this point because Switzerland can go into the U.S. courts, and—

Senator LAUSCHE. And that is the theory also applicable in a court of equity that so long as you have a remedy available otherwise, you shall use it?

Mr. BRIGGS. That is correct, yes.

PROPOSAL FOR ELIMINATION OF ALL RESERVATIONS

Senator LAUSCHE. Now, is it your theory that these reservations which we have set forth in the resolution are superfluous because without them—

Mr. BRIGGS. The same result would be reached.

Senator LAUSCHE. The same result would be reached?

Mr. BRIGGS. Except for (c).

Senator LAUSCHE. (c), the last one?

Mr. BRIGGS. I find it difficult to understand what the purpose is. But (a) and (b), I would say, they are superfluous.

Senator LAUSCHE. Would you mind giving us your exposition of the basic principles and theory which you feel call upon us to accept

the compulsory jurisdiction of the International Court of Justice without reservation?

Mr. BRIGGS. I think that they have been stated this morning by the Secretary of State and by the Attorney General. The United States about once a week makes a public statement through its officials advocating the rule of law, and I have a feeling that it is time the United States endorsed this proposition by indicating a willingness to resort to the Court on issues of legal right, on issues where we have a claim of legal right rather than of interest, and our willingness to be sued on matters of legal right.

Senator LAUSCHIE. In other words, you feel that the law applicable to individuals likewise ought to be applicable to nations in maintaining good conduct in compliance with agreements?

Mr. BRIGGS. Symbolically, yes. I mean there would be some difficulties, but I agree with the principle, yes.

Senator LAUSCHIE. All right. That is all.

PROCEDURE FOR WITHDRAWAL OF DECLARATION

The CHAIRMAN. Professor Briggs, what are the mechanics for withdrawal under the 6 months' clause? How does that work?

Mr. BRIGGS. The mechanics of withdrawal are that under the current resolution, Senate Resolution 196, which is now in force; the original 5-year period has elapsed and we can give 6 months' notice. That notice can be given by the Executive, as far as I understand it.

The CHAIRMAN. The Executive?

Mr. BRIGGS. Yes; that would be my understanding.

The CHAIRMAN. It does not require resolution of Congress?

Mr. BRIGGS. I would not think so, but I would think the Executive would wish to have it.

The CHAIRMAN. Could it be done by resolution of Congress? Do you know whether we could initiate one in case the Congress desired to do so?

Mr. BRIGGS. I think that a resolution could be initiated either in the Senate or perhaps by both Houses requesting the Executive to do this. But I am not an expert on constitutional law, and I am not certain whether the Executive would feel that was mandatory.

The CHAIRMAN. I am not sure constitutional law would answer that question. There is no place where the mechanics are set down, I mean determined, in any of our—

Mr. BRIGGS. Well, as far as the international law aspects are concerned, notice received by the Secretary General of the United Nations that we would terminate our declaration on 6 months' notice would be effective. I do not think they would go behind it to ask whether the Senate had approved or not.

The CHAIRMAN. I see. Then notice from the President?

Mr. BRIGGS. Notice from the President.

COURT'S JURISDICTION BASED ON CONSENT

The CHAIRMAN. Notice from the President would be sufficient. You said a moment ago, or perhaps I misunderstood you, that without this reservation both parties must consent to the jurisdiction of the Court, did you not?

Mr. BRIGGS. Yes.

The CHAIRMAN. Would you elaborate that? What did you mean by that?

Mr. BRIGGS. That is because the Statute itself bases the jurisdiction of the Court in all cases on the consent of the parties.

Now, this consent may be by a special agreement, the first paragraph of article 36 of the Statute. Britain and France, for example, took a case by special agreement. They drafted it for that purpose.

The second paragraph of article 36 is the one we are operating under here; a state deposits a declaration in advance accepting consent.

The CHAIRMAN. That is the consent that you referred to?

Mr. BRIGGS. Yes; that is the acceptance.

Senator LAUSCHE. May I interrupt? Is that the consent that would be reflected if we adopt this resolution?

Mr. BRIGGS. Yes; that is it.

The CHAIRMAN. It is not specific consent in each case.

Mr. BRIGGS. No. Actually, there is a voluntary element even in compulsory jurisdiction. We call it compulsory, but it is perhaps misnamed because it is a jurisdiction which is consented to.

The difference is we consent in advance to be sued in any of the following types of situations, and the other one we consent specifically to a particular case.

It is a difference, in other words, between agreeing to submit a specific case, as U.S. nationals in Morocco, or merely to accept jurisdiction in case we are sued on the basis of our previous consent.

The CHAIRMAN. Any further questions?

Thank you, Professor.

Mr. BRIGGS. I appreciate very much the opportunity, Mr. Chairman.

The CHAIRMAN. Dr. Briggs, your whole statement will be included in the record.

Mr. BRIGGS. Thank you.

(The prepared statement of Mr. Briggs is as follows:)

STATEMENT OF HERBERT W. BRIGGS

Mr. Chairman and members of the committee, my name is Herbert W. Briggs. I am professor of international law, Cornell University, Ithaca, N.Y. I am editor in chief of the American Journal of International Law and president of the American Society of International Law.

The American Society of International Law, which has about 2,700 members, has a policy of not adopting resolutions, but it made an exception to that policy on April 27, 1946, to urge acceptance by the United States of the compulsory jurisdiction of the International Court of Justice "in the types of legal disputes enumerated in article 36 of the statute of the Court." On May 2, 1959, the society authorized me to testify before this committee in the sense of its recommendation "that the United States withdraw its reservations to the acceptance of the optional clause of the statute of the International Court of Justice."

In the statement which follows I am expressing my own personal views, although they are in accord with the Society's recommendations. I should like to comment briefly on four issues.

1. I wish to give my unqualified endorsement to what I regard as the major purpose of Senate Resolution 94, namely, withdrawal of the Connally amendment reservation and the deposit by the United States of a new declaration accepting the compulsory jurisdiction of the International Court of Justice over international legal disputes without such a reservation. The withdrawal of the restrictive words "as determined by the United States" appears to me to be dictated by experience as well as by principle.

Dealing first with principle, I find the reservation of "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America" to be incompatible with article 36, paragraph 6, of the Court's own statute, according to which: "6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court." That provision of the statute, I submit, would be binding on the United States in any case in which we appeared before the Court even in the absence of any declaration by us accepting compulsory jurisdiction. There is nothing optional about article 36, paragraph 6; it is a part of the treaty we have accepted by becoming a member of the United Nations and a party to the Court's statute. In this light, the Connally amendment reservation appears to be more than a reservation to our declaration accepting compulsory jurisdiction; it can be viewed as an invalid attempt to modify unilaterally the terms of a treaty to which the United States is a party.

Another serious objection to the peremptory domestic jurisdiction reservation is its discretionary nature. Because we reserve the right to let the Court know when it may take jurisdiction in cases brought against us, some judges of the Court have concluded that the United States has not really undertaken an obligation to accept the Court's compulsory jurisdiction. In separate opinions in the *Interhandel* case, they concluded that the invalidity of the peremptory domestic jurisdiction reservation nullified the entire declaration by which the United States purported to accept the Court's compulsory jurisdiction.

This was not the view of the majority of the Court in the *Interhandel* case, nor is it my view. The United States has brought proceedings before the Court as applicant in seven cases and has appeared as respondent four times. It has invoked its declaration accepting compulsory jurisdiction both as plaintiff and as defendant. If doubts still persist in the minds of some judges as to the validity of the U.S. declaration accepting compulsory jurisdiction, it is time to withdraw the self-judging reservation.

I come now to the lessons of experience and wish to make two points: First, that the peremptory domestic jurisdiction reservation has not served us effectively in practice; and second, that it is potentially more dangerous to our interests than protective thereof.

The United States has invoked the peremptory domestic jurisdiction reservation on two occasions, the first and second phases of the *Interhandel* case with Switzerland. The United States won both cases; but in neither case did the Court give effect to the peremptory domestic jurisdiction reservation as a bar to its jurisdiction. In the first phase, by its order of October 24, 1957, the Court rejected the Swiss request for interim measures of protection for lack of urgency rather than for lack of jurisdiction "as determined by the United States." In the second phase, in its judgment of March 21, 1959, the Court declined to regard our invocation of the peremptory domestic jurisdiction reservation as a bar to its jurisdiction to proceed to the issue of the admissibility of the Swiss claim.

The conclusion is inescapable that the peremptory domestic jurisdiction reservation is not really automatic. Despite our invocation of the reservation, the Court proceeded to decide *sub silentio* the jurisdictional issues relating to interim measures of protection and to admissibility without either giving effect to, or considering the legal validity of, our reservation.

The potential danger to U.S. interests of maintaining any longer the peremptory domestic jurisdiction reservation is also highlighted by the lessons of experience. In the *Norwegian Loans* case in 1957, the Court held that Norway, which had made no such reservation, was entitled on the basis of reciprocity to invoke the French peremptory domestic jurisdiction reservation which had been copied without debate by the French from the Connally reservation. The reservation thus became a boomerang which nonsuited as plaintiff the state which had envisaged using the device as defendant. This may help to explain why France withdrew her peremptory domestic jurisdiction reservation in 1959 and why India also abandoned it in her declaration of 1959.

The fact that the self-judging reservation is a two-edged weapon renders the United States particularly vulnerable. The United States, pursuant to Public Law 472, 80th Congress, has concluded at least 19 economic cooperation agreements with foreign countries. Some of these states have deposited declarations pursuant to article 36(2) of the Court's statute accepting the compulsory jurisdiction of the Court and some have not. But each of these 19 treaties con-

tains a clause by which the parties agree to submit to the decision of the International Court of Justice certain claims on behalf of their nationals for injuries arising from governmental measures. This is an acceptance of compulsory jurisdiction. However, each of these treaties contains further stipulations limiting such acceptance by the United States by the terms and conditions of the U.S. declaration of 1946 including the Connally reservation. This means that the United States might be defeated as plaintiff any time the state against whom we brought the claim on behalf of our injured national invoked our own self-judging reservation against us. In other words, our reservation potentially frustrates clauses of a whole series of treaties we have concluded.

Reasons of principle and the lessons of experience strongly suggest the withdrawal of the words "as determined by the United States."

It may be doubted where a revised U.S. declaration accepting the compulsory jurisdiction of the Court needs to contain any domestic jurisdiction reservation. Most States accepting the Court's compulsory jurisdiction have not made such reservations. The reason is, as expressed by Attorney General Rogers, that "the Court's statute explicitly limits its jurisdiction to international legal disputes. By the plain terms of its grant, it has no jurisdiction over domestic matters."

In any case, it seems desirable to leave to the Court the determination whether or not a dispute is with regard to a matter which, according to international law, falls exclusively within the domestic jurisdiction of the United States.

- 2. The second issue on which I wish to comment briefly has already been raised by Assistant Secretary of State Macomber in his report to Senator Fulbright on April 30, 1959 (cf. Congressional Record, daily edition, Jan. 18, 1960, p. 508), and refers to the words "hereafter arising" found in Senate Resolution 94, page 2, lines 1 and 2.

When this resolution is adopted, it will require the deposit of a new declaration of acceptance of the Court's compulsory jurisdiction and the words "hereafter arising" will refer to the date of deposit of the new U.S. declaration, thus excluding *ratione temporis* disputes which today come within the scope of the declaration currently in force.

There are two possible ways of avoiding such an unreasonable exclusion: either delete the words "hereafter arising" entirely, or substitute for them the words "arising after August 2, 1946."

The reasons for excluding a dispute from the operation of the rule of law merely because it arose before a certain date are not obvious. The current declarations of 16¹ states contain no reservations limiting the jurisdiction of the Court *ratione temporis*. On the other hand, 23² declarations currently in force contain such reservations. All 23 of these declarations limit acceptance of the Court's compulsory jurisdiction to disputes arising after a certain date, and 17³ contain the further limitation that the situations or facts giving rise to the dispute must also be subsequent to that date. The exclusion date is determined by various formulas, frequently the date of entry into force of the declaration or (in case of renewals) of a prior declaration. Apparently only France and the Union of South Africa today follow a policy of excluding from each new declaration disputes for which jurisdiction had been accepted under the previous declaration. The Netherlands abandoned such a practice in its declaration of 1956 and put the exclusion date back to 1921, the date when it first accepted the compulsory jurisdiction of the Permanent Court.

It seems desirable that the United States should omit the reservation *ratione temporis* contained in the words "hereafter arising." Under the condition of reciprocity which the Court is required to apply between the parties before it, any date we set for excluding prior disputes can be used against us to defeat jurisdiction when we are plaintiffs. If, however, reasons are thought to exist for excluding certain past disputes from the operation of the rule of law, the new declaration should at least accept compulsory jurisdiction for legal disputes arising after August 2, 1946.

¹ Cambodia, China, Denmark, Dominican Republic, Haiti, Honduras, Liechtenstein, Nicaragua, Norway, Panama, Paraguay, Philippines, Portugal, Switzerland, Thailand, and Uruguay.

² Australia, Belgium, Canada, Columbia, El Salvador, Finland, France, India, Israel, Japan, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Pakistan, the Sudan, Sweden, Turkey, Union of South Africa, United Arab Republic, United Kingdom, and United States.

³ Australia, Belgium, Canada, Colombia, Finland, France, India, Israel, Japan, Luxembourg, Mexico, New Zealand, the Sudan, Sweden, Turkey, Union of South Africa, and United Kingdom.

3. The third issue I shall not press; but I would merely observe that exclusion "a" (S. Res. 94, p. 2, lines 10-13) seems to serve little purpose. Article 95 of the United Nations Charter provides that—

"Nothing in the present charter shall prevent members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future."

If the parties to a dispute which has not been submitted to the International Court of Justice entrust it to another tribunal, the reservation seems unnecessary. If the parties to any case of which the Court has been seized agree to its discontinuance in order to submit it to another tribunal, no reservation is required for this purpose, since, by article 68 of the Court's rules, the Court "shall direct the removal of the case from the list."

4. The fourth issue on which I wish to comment relates to proviso (c) (S. Res. 94, p. 2, lines 17-20):

"c. disputes arising under a multilateral treaty, unless (1) all parties to the treaty affected by the decision are also parties to the case before the Court, or (2) the United States specially agrees to jurisdiction."

This obscure reservation appears either to contradict our acceptance of compulsory jurisdiction as regards multilateral treaties; or to establish a limitative condition which would drastically defeat our interest in encouraging resort to the rule of law.

To the extent that the reservation requires under (2) (line 20, p. 2, S. Res. 94) that the United States make a special agreement accepting the Court's jurisdiction, the special agreement replaces the declaration as the basis of the Court's jurisdiction. The reservation contradicts our acceptance of compulsory jurisdiction (in lines 1-3, p. 2, S. Res. 94) "in all legal disputes hereafter arising concerning—(a) the interpretation of a treaty." We are limiting compulsory jurisdiction to bilateral treaties, thereby excluding hundreds of the most important treaties to which we are a party.

On the other hand, if we make no special agreement, we appear to be requiring that all parties to the treaty affected by the decision become codefendants with us before we accept the Court's jurisdiction. Suppose the United States is sued before the Court over the interpretation of the NATO treaty or the United Nations Charter. The requirement that all parties to those treaties must become codefendants with us would erect an insuperable barrier to the jurisdiction of the Court. Furthermore, this reservation too can boomerang against us if we seek to bring an action over a dispute arising under a multilateral treaty. The defendant can invoke it.

There appears to be no problem which this lamentable reservation solves. No State—and this includes the United States—is bound by a decision of the Court in a case to which it is not a party (art. 59, Court's Statute).

The only effect of the multilateral treaty reservation is to nullify U.S. acceptance of compulsory jurisdiction in regard to a large and important category of cases and to sterilize the rule of law.

Although the major purpose of the Humphrey resolution is to effect the withdrawal of the Connally amendment reservation, it would seem to be in accord with President Eisenhower's stated purpose to withdraw the multilateral treaty reservation before urging "similar acceptance of the Court's jurisdiction by every member of the United Nations."

(The following letter and attachment were subsequently received from Mr. Briggs for inclusion in the record:)

CORNELL UNIVERSITY,
DEPARTMENT OF GOVERNMENT,
Ithaca, N.Y., January 29, 1960.

Senator J. W. FULBRIGHT,
Chairman, Senate Committee on Foreign Relations, U. S. Senate,
Washington, D.C.

DEAR SENATOR FULBRIGHT: I appreciate very much the opportunity granted to me to testify before the Senate Committee on Foreign Relations with reference to Senate Resolution 94, relating to the recognition of the jurisdiction of the International Court of Justice.

Referring to the statement appearing on page 4 of the mimeographed copy of my testimony that the United States has concluded at least 19 economic cooperation agreements with foreign countries, it occurs to me that it might be

useful to insert in the record the text of the pertinent article. Article IX of the Economic Cooperation Agreement with Sweden, under Public Law 472, 80th Congress (TIAS 1793) signed at Stockholm, July 8, 1948, reads in part as follows:

"ARTICLE IX

"(Settlement of Claims of Nationals)

"1. The Governments of the United States of America and Sweden agree to submit to the decision of the International Court of Justice any claim espoused by either Government on behalf of one of its nationals against the other Government for compensation for damage arising as a consequence of governmental measures (other than measures concerning enemy property or interests) taken after April 3, 1948, by the other Government and affecting property or interests of such national, including contracts with or concessions granted by duly authorized authorities of such other Government. It is understood that the undertaking of each Government in respect of claims espoused by the other Government pursuant to this paragraph is made in the case of each Government under the authority of and is limited by the terms and conditions of such effective recognition as it has heretofore given to the compulsory jurisdiction of the International Court of Justice under article 36 of the statute of the Court. (TIAS 1598) The provisions of this paragraph shall be in all respects without prejudice to other rights of access, if any, of either Government to the International Court of Justice or to the espousal and presentation of claims based upon alleged violations by either Government of rights and duties arising under treaties, agreements or principles of international law." * * *

The phraseology of this treaty is typical of that contained in treaties with China, France, Belgium, Netherlands, Norway, Denmark, United Kingdom, Luxembourg, Turkey, Portugal, and Israel. In treaties with the following countries, the phraseology is somewhat varied: Italy, Iceland, Austria, Greece, Ireland, Jordan, Spain.

It is my opinion that if we sued any one of these states on behalf of our nationals, we would have provided them gratuitously with a defense under the Connally reservation amendment which would not otherwise be available to them.

I am enclosing a copy of Resolution I on the compulsory jurisdiction of international courts and tribunals which was unanimously adopted by the Institute of International Law at its Neuchâtel session on September 11, 1959. Although the Institute is composed predominantly of persons who are not citizens of the United States, it is a distinguished body of international lawyers, including judges on the International Court of Justice, legal advisers of foreign offices, jurists who have practiced before the Court and professors of international law, and the resolution is expressive of the attitude of these men toward the self-judging reservation.

I shall leave to your judgment the question of whether it would be appropriate to attach these materials to my testimony as an annex.

With my appreciation for the courtesy extended to me by you and the members of the committee,

Sincerely yours,

HERBERT W. BRIGGS,
Professor of International Law.

Resolution and Vœu Adopted by the Institute of International Law at its Session at Neuchâtel (3-12 September 1959)

I. Compulsory Jurisdiction of International Courts and Tribunals

(24th Commission)

The Institute of International Law,

Having examined the present situation as regards the compulsory jurisdiction of international courts and arbitral tribunals;

Convinced that the maintenance of justice by submission to law through acceptance of recourse to international courts and arbitral tribunals is an essential complement to the renunciation of recourse to force in international relations;

Considering that more general acceptance of compulsory jurisdiction would be an important contribution to respect for law and noting with concern that at the present time the development of such jurisdiction lags seriously behind the needs of a satisfactory administration of international justice;

Recognising the importance of confidence as a factor in the wider acceptance of international jurisdiction;

Considering it essential that Article 36, paragraph 2, of the Statute of the International Court of Justice should remain an effective means for securing progressively more general acceptance of the compulsory jurisdiction of the Court;

Recalling the Resolutions concerning the principle of compulsory jurisdiction adopted by the Institute in 1877, 1904, 1921, 1936, 1937, 1954, 1956 and 1957, and enumerated in the Annex to the present Resolution, and in particular the *vu* concerning the reservation in respect of matters of domestic jurisdiction adopted at Aix-en-Provence in 1954 and the Resolution concerning a model clause conferring compulsory jurisdiction on the International Court of Justice for inclusion in conventions adopted at Granada in 1956;

Adopts the following Resolutions:

1. In an international community the members of which have renounced recourse to force and undertaken by the Charter of the United Nations to settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered, recourse to the International Court of Justice or to another international court or arbitral tribunal constitutes a normal method of settlement of legal disputes as defined in Article 36, paragraph 2, of the Statute of the International Court of Justice.

Consequently, recourse to the International Court of Justice or to another international court or arbitral tribunal can never be regarded as an unfriendly act towards the respondent State.

2. It is of the highest importance that engagements to accept the jurisdiction of the International Court of Justice undertaken by States should be effective in character and should not be illusory. In particular, States which accept the compulsory jurisdiction of the Court in virtue of Article 36, paragraph 2, of the Statute should do so in precise terms which respect the right of the Court to settle any dispute concerning its own jurisdiction in accordance with the Statute and do not permit States to elude their submission to international jurisdiction.

It is highly desirable that States having excluded from their acceptance of the compulsory jurisdiction of the International Court of Justice in virtue of Article 36, paragraph 2, of the Statute of the Court matters which are essentially within their domestic jurisdiction as determined by their own government, or having made similar reservations, should withdraw such reservations having regard to the judgments given and opinions expressed in the *Norwegian Loans and Interhandel Cases* and to the risk to which they expose themselves that other States may invoke such reservations against them.

3. In order to maintain the effectiveness of the engagements undertaken, it is highly desirable that declarations accepting the jurisdiction of the International Court of Justice in virtue of Article 36, paragraph 2, of the Statute of the Court should be valid for a period which, in principle, should not be less than five years. Such declarations should also provide that on the expiration of each such period they will, unless notice of denunciation is given not less than twelve months before the expiration of the current period, be tacitly renewed for a new period of not less than five years.

4. With a view to ensuring the effective application of general conventions, it is important to maintain and develop the practice of inserting in such conventions a clause, binding on all the parties, which makes it possible to submit disputes relating to the interpretation or application of the convention either to the International Court of Justice by unilateral application or to another international court or arbitral tribunal; this clause might be based on the provisions of the Resolution concerning a model clause conferring compulsory jurisdiction on the International Court of Justice for inclusion in conventions adopted by the Institute in 1956.

5. In the interest of world economic development it is desirable that economic and financial agreements concerning development schemes, whether concluded between States or concluded with States by international organisations or international public corporations, should contain a clause conferring on the International Court of Justice (so far as the Statute of the Court allows) or on another appropriate international court or arbitral tribunal compulsory jurisdiction in any dispute relating to their interpretation or application.

6. Without prejudice to the possibility of international remedies being made available directly to private parties, certain economic and financial agreements between States could usefully contain a general provision for compulsory juris-

diction in respect of claims brought by one of the States concerned (either acting on its own behalf or espousing a claim on behalf of one of its nationals) against one of the other States concerned.

Vœu

The Institute of International Law

Draws the attention of institutions responsible for legal education, of professional bodies of jurists and legal practitioners, and of all those engaged in the publication of judicial decisions to the need for strengthening the confidence of peoples and governments in international adjudication by promoting wider and more thorough knowledge of the working and decisions of the International Court of Justice and other international courts and arbitral tribunals; and

Expresses the hope that public and private bodies, both national and international, will consider what measures should be taken to promote wider diffusion of the decisions of international courts and tribunals among jurists and legal practitioners.

(11 September 1959.)

ANNEX

1. *Resolutions and Vœu of the Institute on the Principle of Compulsory Jurisdiction*

1. Resolution on the compromis clause to be inserted in treaties (12 September 1877, Zurich Session)

*Tableau général*¹ No. 45, p. 145; *Annuaire* 2 (1878), p. 160.

2. Resolution on recourse to the Permanent Court of Arbitration (26 September 1904, Edinburgh Session)

Tableau général No. 46a, pp. 145, 146; *Annuaire* 20 (1904), p. 210.

3. Resolution on signature of the optional clause of the Permanent Court of International Justice (6 October 1921, Rome Session)

Tableau général No. 52, pp. 159, 160; *Annuaire* 28 (1921), pp. 201, 202.

4. Resolution on the extension of compulsory arbitration (14 October 1929, New York Session)

Tableau général No. 46b, pp. 146, 147; *Annuaire* 35 (1929), II, pp. 303, 304.

5. Resolution on the jurisdictional clause in conventions of international unions, notably those relating to industrial property and literary and artistic property (24 April 1936, Brussels Session)

Tableau général No. 88, pp. 273-276; *Annuaire* 39 (1936), II, pp. 305-310.

6. Resolution on the legal nature of advisory opinions of the Permanent Court of International Justice and on their value and significance in international law (3 September 1937, Luxembourg Session.)

Tableau général No. 55, pp. 162, 163; *Annuaire* 40 (1937), pp. 272, 273.

7. *Vœu* concerning the reservation in respect of matters of domestic jurisdiction (29 April 1954, Aix-en-Provence Session)

Tableau général No. 2b, p. 4; *Annuaire* 45 (1954), II, p. 293.

8. Resolution concerning a model clause conferring compulsory jurisdiction on the International Court of Justice for inclusion in conventions (17 April 1956, Granada Session)

Tableau général No. 53), pp. 160, 161; *Annuaire* 46 (1956), pp. 360-362.

9. Resolution on judicial redress against decisions of international organizations (25 September 1957, Amsterdam Session)

Annuaire 47 (1957), II, pp. 476-479.

2. *Vœu concerning the Reservation in Respect of Matters of Domestic Jurisdiction*

(29 April 1954; Aix-en-Provence Session)

The Institute of International Law expresses the hope that States which include in their declarations accepting the compulsory jurisdiction of the International Court of Justice a reservation in respect of matters of domestic juris-

¹ *Tableau général des Résolutions (1873-1956)*, Bale, 1957.

diction will leave it to the Court to decide in each particular case whether the reservation is applicable.

3. Resolution concerning a Model Clause Conferring Compulsory Jurisdiction on the International Court of Justice for Inclusion in Conventions

(17 April 1956; Granada Session)

I.

The Institute of International Law recommends that governments and international organisations should, when drafting multilateral or bilateral international conventions, include therein a clause conferring compulsory jurisdiction on the International Court of Justice in any dispute relating to the interpretation or application of the convention.

II.

This clause might be in the following terms:

"Any dispute relating to the interpretation or application of this convention shall be subject to the compulsory jurisdiction of the International Court of Justice, which may be seised of the matter by unilateral application by any party to the dispute."

III.

If the convention provides for a special procedure for the examination of questions relating to its interpretation or application, it would be appropriate to add to the provision establishing such a procedure a clause in the following terms:

"Any dispute relating to the interpretation or application of this convention which has not been settled by means of the procedure provided for (in the preceding article or in article X, as the case may be) shall be subject to the compulsory jurisdiction of the International Court of Justice which may be seised of the matter by unilateral application by any party to the dispute."

IV.

1. If the convention contains a provision for the settlement by arbitration of disputes relating to its interpretation or application, it is desirable that this provision should be supplemented by a clause in the following terms:

"If the arbitration provided for in article X has not resulted in a decision settling the dispute relating to interpretation or application of this convention, any party to the dispute may submit it by unilateral application to the International Court of Justice."

2. If the convention contains a provision for the submission to a procedure of conciliation of disputes relating to its interpretation or application, the jurisdictional clause set forth in paragraph I should be supplemented by a clause indicating under what conditions and after what period of time failure of the conciliation procedure entitles any party to the dispute to submit it to the International Court of Justice.

V.

If it is desired to include in a convention granting compulsory jurisdiction to the Court a provision making any judgment relating to the interpretation of the convention given by the International Court of Justice binding on all parties to the convention, such a provision might be in the following terms:

"The High Contracting Parties agree that if one or more States submit to the Court an application for the interpretation of a provision of this convention the decision given by the Court shall be binding upon all the parties to the Convention, whether or not they have exercised the right of intervention accorded to them by the Statute of the Court."

The CHAIRMAN. The next witness is Mr. Robert H. Kelley of Houston, Tex. Is he here?

**STATEMENT OF ROBERT H. KELLEY, ATTORNEY AT LAW,
HOUSTON, TEX.**

The CHAIRMAN. Mr. Kelley, we are very glad to have you. Do you have a prepared statement?

Mr. KELLEY. I have, sir, and I have given copies of it to the clerk.

The CHAIRMAN. That is fine. Thank you very much. The complete statement will be included in our record.

Would you summarize for us?

BACKGROUND OF WITNESS

Mr. KELLEY. I would like first to read the introductory part of it describing something about myself.

The CHAIRMAN. All right.

Mr. KELLEY. My name is Robert H. Kelley. I am a practicing attorney at law, residing and having offices in Houston, Tex. I was born in Houston, and have practiced law there since the summer of 1910.

I am a citizen of the United States and a member of the bars of the Supreme Court of the United States, the Court of Appeals for the Fifth Circuit, the U.S. District Court for the Southern District of Texas, and of the Supreme Court of Texas.

I received an A.B. degree from the Catholic University of America, and in 1958 the honorary degree of doctor of laws from the same institution. From the University of Texas in 1910 I received the degree of LL. B.

I am also a member of the Sons of the American Revolution and the Society of the Ark and the Dove, which latter is composed of the lineal descendants of the first colonists of Maryland who, in 1634, came to this country on those ships.

I am not and never have been a member of the Communist Party, and have no need of the fifth amendment.

I am opposed to Senate Resolution 94 for the reasons stated in this statement.

The CHAIRMAN. Thank you very much. Now, would you summarize those reasons for the benefit of the committee, sir.

RESOLUTION ADOPTED BY STATE BAR OF TEXAS

Mr. KELLEY. In the first place, Mr. Chairman, I have included in here a copy of the resolution adopted on the 4th of July last by the State Bar of Texas opposing this resolution. That resolution was adopted, first, in the committee on resolutions, and later it was adopted on recommendation of that committee by the general assembly of the State Bar of Texas.

There was very little opposition to it in point of numbers. One of the chief complaints made before the general assembly was that the proponents of the resolution in appearing before the resolutions committee had come with books under their arms as though a man could discuss this kind of thing adequately and intelligently without having reference to some books such as the Charter of the United Nations.

JUDGES OF THE INTERNATIONAL COURT

Now, I have referred in here, first of all, to the fact that there are 15 judges on this Court, of whom only one is a national of the United States, and you cannot have more than one, that they are from various countries: the United States, Egypt, Nationalist China, Australia, Greece, Poland, France, Mexico, Panama, Britain, Argentina, Uruguay, Norway, Pakistan, and Soviet Russia.

I refer next to the fact that in 10 or 11 years, since the Court has been in existence, it has only decided about 10 or 11 cases all together. The job is a sinecure. It is a 9-year job, subject to reelection, with a tax-free salary of about \$21,000 a year, with diplomatic privileges and immunities and certain other tax-free allowances.

COURT SITTING IN "CHAMBERS"

Now, one of the gimmicks in it is that this Court may sit not only en banc with 15 members, but may also sit in what the Statute of the Court calls "chambers." We would call them divisions in this country, in "chambers" of three or more members of the Court, and any case decided by one of these chambers is stated by the Statute of the Court to have the same force as the unanimous decision of the entire Court.

Now, who would sit in any case in which we might be involved is a matter over which we would have no control.

In the case of the Panama Canal, for instance, there might be a chamber composed solely of Latin American judges. What they would do, I would not be brave enough to forecast, or you might have the man from Poland and the man from Pakistan and the man from the United Arab Republic. I do not know how they would vote; neither does anybody else.

SELECTION OF JUDGES OF INTERNATIONAL COURT

I refer then to the fact that the special provisions about these judges are that they are nominated by governments, that they can be dismissed by only the unanimous vote of their colleagues, and I do not suppose any of them would be disposed to start that kind of a game of musical chairs; that on the expiration of these 9-year terms, a judge can be renominated only in the same way that he was in the first instance; that he does not take any oath; and that he is bound to follow no certain rule of decision, which is the point that Senator Hickenlooper was driving at a while ago.

You talk about the rule of law and in the Texas Assembly one gentleman said, "what law?" Where are we going to find it? Is it written? No, it is not.

The judgment is final and nonappealable when rendered by this Court, and these judges are not angels but they are human beings and if they got this kind of a sinecure, they would probably listen very carefully to the instructions they get from their own governments if they want to be reappointed.

All these courts that I know of have been subject to very serious criticism from time to time. The first serious criticism of the Supreme

Court of the United States arose out of its decision in *Chisholm v. Georgia*, and resulted very promptly in the 11th amendment to the Constitution, saying that a citizen of one State could not sue another State in the Supreme Court of the United States. And the Supreme Court of the United States, as you gentlemen know very well, is being criticized from day to day by its decisions, and they are not very stable in what they do, either, because in the case of Reid against Covert, which involved General Kreuger's daughter, within a 12-month period, lacking a few days, they decided in Reid against Covert one way and then before the expiration of the year they turned around and decided it in another way because, in a five-to-four split of the Court, one man moved over and the case was decided in exactly the opposite direction.

Now, I do not know of any reason why this Court could not do it itself.

ISSUES INVOLVING THE PANAMA CANAL

Now, in the case of the Panama Canal, I do not know what the words "can be held against the United States"—if a suit should be brought against it by either Panama or Colombia—I do not know what that would be. It has been claimed by some that President Theodore Roosevelt practically held them up at the point of a few guns on some ships he sent down there and set up the Republic of Panama, which was then a small band of revolutionaries, and then made a trade with the revolutionary government of Panama. Now, that might be held to have been an international fraud.

Now, the charter of the United Nations refers especially in articles 41 and 48, to the provisions for armed force to carry out the decrees or orders of the United Nations of which the Court is the judicial organ.

Now, it has been asserted here this morning that we have a veto in the Security Council, which is necessary to bring this armed force into realization, but at the same time they have practically said that we would not dare to invoke that veto because thereby we would be involved in abandoning the so-called rule of law even more than by insisting on our present reservation.

If armed force should be brought into existence against us as far as the Panama Canal is concerned, we would have to abandon the slogan "world peace through law" and say, in effect, "Come and get it." And I would be in favor of doing that, if necessary.

Now, it has also been said by some of the advocates of this movement that if we will abandon our reservations, maybe, sometime, somehow, some of these other nations will abandon theirs. Maybe the Communist nations will come in and submit themselves completely to the so-called compulsory jurisdiction of the International Court. I doubt if the Communist nations are that naive and I hope we will not be.

QUESTION OF DISTINCTION BETWEEN DOMESTIC AND FOREIGN AFFAIRS

Now, I think it was Senator Wiley who referred to this pamphlet of the State Department in which the statement was made:

There is no longer any real distinction between "domestic" and "foreign" affairs.

Senator LAUSCHE. From what page are you reading?

Mr. KELLEY. Page 11 of my statement, Senator. That was in State Department Publication No. 3972, General Foreign Policy Series 26, entitled "Our Foreign Policy," released September 1950, and that statement which I quoted was in the opening paragraph of that pamphlet.

Now, if we release our power to determine unilaterally that something is within our domestic jurisdiction, and leave that to the Court, the adversary would come in and say here, "Your own State Department has said there is not any such thing as your domestic affairs. You do not have any. The Court has jurisdiction."

Now, if we go in here like this, we are laying ourselves liable to having this International Court, in substance, and by its adjudications, amend the Constitution which under its own terms can be amended only by the States of the Union.

Now, I also advert in here to the fact that the advocates of this movement do not refer, although Secretary Herter did this morning, to the matter of settling international disputes by arbitration. Beginning with the arbitrations under the Jay Treaty of 1794, which came right after our Treaty of Peace with Great Britain, it is said that those arbitrations disposed of more than 500 claims. A more recent one involved the controversy between Canada and the United States. In that case some of you gentlemen may remember that it was arbitrated by two arbitrators, one selected by Canada, who was the Chief Justice of the Supreme Court of the Dominion. The other one was Mr. Justice Van Devanter of our own Supreme Court. Their decision was unanimous, and upheld the contention of the United States.

The CHAIRMAN. Mr. Kelley, your time is about up.

Mr. KELLEY. I thought I was trying to reply to you. I am perfectly willing, Senator, to let this statement stand for what it is.

The CHAIRMAN. All right. We will receive your statement, and we will ask some questions.

EXCERPT FROM DEPARTMENT OF STATE PUBLICATION

(The excerpt from Department of State Publication 3972, entitled "Our Foreign Policy," released September 1950, and directed by the chairman to be copied into the record (see p. 96), is as follows:)

OUR FOREIGN POLICY

Its Roots

There is no longer any real distinction between "domestic" and "foreign" affairs.

Practically everything we do, the way we tax and spend our national income, the way we run our public and private business, the way we settle the differences among ourselves and with other nations, what we say in our newspapers, over the air and on public platforms, our attitudes toward each other and toward other peoples—all these things affect not only our security and well-being at home, but also our influence abroad.

All these things go into the making of the character, the personality and the reputation of the United States. Out of all these things grow the foreign policies of the United States.

Policies are an expression of the national interests.

That is a way of saying that our policies reflect what we are and what we want. During the 175 years since we became a nation, our national interests have

changed in some ways, but their general character has remained constant. Here are some of the values that have persisted all through our history:

We are an independent nation and we want to keep our independence.

We attach the highest importance to individual freedom, and we mean to keep our freedom.

We are a peaceful people, and we want to get rid of wars and the threat of wars.

We have a comparatively high standard of living. We want to raise the standard so that everyone in the United States will eventually have a chance to earn a decent and secure living.

We are a friendly people. We have no traditional "enemies," and we want to be on good terms with every other people.

These are the things on which Americans, with all their different points of view, are most likely to agree.

It is the job of the Government, as the agent of the people, to promote these national interests.

The Federal Government, as the agent of the people, continually has hard choices to make. It is the job of the Government, as the agent of *all* the people, to try to harmonize group and sectional interests on the one hand with national interests on the other.

There has never been a time in our history when we could go about the business of promoting our national interests free from the threat of destructive forces. Some of these forces are inside the country. They stem from groups that oppose the national interests. Some Americans have a view of life that conflicts with the basic propositions on which our democracy was founded. Some try to profit at the expense of the freedom or well-being of others.

Some hostile forces have been outside our country. They have come from nations or ruling groups bent on waging military or economic war or on dominating other nations.

To deal with these forces, the American people have had to subordinate some of their national interests temporarily, in order to promote or preserve others. For example, three times in recent years we have been forced to disrupt our peaceful lives and take up arms to preserve the independence and freedom that we value even more highly. When there is a threat of aggression, our vital interest in peace forces us to tax ourselves heavily to build the military and economic defenses of the free world, at the expense of our interest in a rising standard of living.

So it is that making policy is a matter of making choices. Often it is a matter of making hard and unpleasant choices, of deciding which is the lesser of two evils.

Sometimes it is possible to make policies that are creative and good in themselves, because they make a bold new approach to a tough old problem, or because they foresee a need before it arises, or because they head off trouble before it starts.

Recent history provides examples of such policies in lend-lease, the United Nations, the Marshall Plan, and the Point Four Program.

Politics has been described as the art of the possible. To broaden the area of the possible is the art of statesmanship.

* * * * *

BASIS FOR A COURT'S DECISIONS

The CHAIRMAN. Senator Hickenlooper, do you have any questions?
 Senator HICKENLOOPER. Yes.

Mr. Kelley, you have had a great deal of experience in practicing law before the courts. Would you say that, within your experience, many decisions of courts seem to turn from time to time upon the individual concept of morality or policy or philosophy of the judges themselves?

Mr. KELLEY. I think that is necessarily so even when a court is bound with the kind of a system of laws and constitutional restrictions that we have in this country. It is disclosed, I think, every week by the decisions in the Supreme Court of the United States.

Senator HICKENLOOPER. Well, I wanted to go a step further along the line which you have just suggested, and ask you whether you thought that might not be even more so in the case of a court which does not have the body of guidelines such as a sovereign country may have within its own judicial system or its legislative system?

Mr. KELLEY. I think that is true.

Senator HICKENLOOPER. An international court without specific guidelines but with only broad, general philosophies and policies and customs, which may or may not have been long accepted, and treaties which might have been subject to change and alteration from time to time over the years, might be even more subject to control, based upon the philosophy and the individual concepts of the individual judges or their own national background?

Mr. KELLEY. I think so, Senator, for this reason: I do not know, there may be some of these people that know something about the system of law that is in force in Moslem countries such as Pakistan and Egypt. I do not know what kind of a system of law they have in Greece. I know just a little bit about what kind of a system of law they have in the Scandinavian countries. I think I know a good deal about the kind of system of law they have in Great Britain and Canada and Australia, which is very similar to our own. But I know very little, I know something, but very little, about the system of laws that are in force in these Latin American countries.

Now, I think, necessarily, that the way any judge will look at any question that is brought before him is bound to be colored by the system of law under which he grew up and which he absorbed almost with his mother's milk.

Senator HICKENLOOPER. That would not necessarily result in his attempting to apply a particular system of law, but his basic thinking and his approach to the problem could well be influenced by his background?

Mr. KELLEY. That is what I mean.

Senator HICKENLOOPER. And by his training?

Mr. KELLEY. That is what I mean.

Senator HICKENLOOPER. Even giving full credit to the fact that he would be a sincere man and not a designing person.

I think that is all.

The CHAIRMAN. Senator Lausche?

DEPARTMENT OF STATE PUBLICATION

Senator LAUSCHE. Are you familiar within what context this statement appeared, "There is no longer any real distinction between 'domestic' and 'foreign' affairs"?

That statement in itself has quite a heavy impact. But the true meaning of it can only be ascertained by putting it in the framework of the whole document.

Mr. KELLEY. I would suggest, Senator, that I cannot answer that verbally. I would suggest that perhaps it might be a good idea if the committee would incorporate that entire pamphlet in this record, so that you may then determine how much of that they take back in subsequent pages, if any.

Senator LAUSCHE. I suppose a copy of that will be available for examination.

That is all.

WITNESS' OPINION OF COURTS IN GENERAL

The CHAIRMAN. Mr. Kelley, is it fair to say that you do not have a very high opinion of courts in general?

Mr. KELLEY. I did not understand that.

The CHAIRMAN. I say, is it fair to say that you do not have a very high opinion of courts in general?

Mr. KELLEY. No, sir. No. Quite the contrary. I do have a very high opinion of them. I have a rather low opinion of some of the judges on some of the courts, but the courts themselves as institutions and as growing and living organisms, I have very high respect.

The CHAIRMAN. When you said our Supreme Court is not very stable, I drew the conclusion that you were not very impressed by it as an institution.

Mr. KELLEY. I was thinking of two situations. You remember that a year or two ago they decided this case of *Reid v. Covert*, as I mentioned. Back a few years ago they decided the school segregation cases in which they absolutely discarded the rule that had been announced in 1896 in the case that came up from Louisiana involving segregation on railroad trains. I mean that the Court backs and fills. The Court has decided a question one year in one way. A few years later the composition of the Court changes, and they decide it slightly differently, sometimes altogether differently.

That, I think, brings out what Senator Hickenlooper mentioned about a man's views being colored by his previous experience and education; and, as the composition of the Court changes, when they have decided a case, say, 5 to 4, as they do so frequently in the U.S. Supreme Court—a small change in the composition of the Court may result in a change in the principle of a decision.

OPPOSITION TO THE UNITED NATIONS

The CHAIRMAN. Do you feel that this country was mistaken in joining the United Nations?

Mr. KELLEY. Do I what?

The CHAIRMAN. Do you approve of the United Nations?

Mr. KELLEY. Do I approve of it? I do not think it has ever done any good for us so far, Senator.

The CHAIRMAN. Do you think we should withdraw from it?

Mr. KELLEY. I do not think that would hurt us a bit. Especially, I think we ought to get that vast nest of subversives out of New York City that are there on account of the United Nations.

The CHAIRMAN. I believe that is all.

Do you have any further statement? We must adjourn now until 2 o'clock.

Senator LAUSCHE. May I just make a comment?

The CHAIRMAN. Yes.

Senator LAUSCHE. The day I became a judge and donned the judicial robe, I became, under a new facade, a man of great moral character

and intellectual ability, which was completely contrary to the concept that many had of me before I became a judge. [Laughter.]

MR. KELLEY. Well, from what I know of the Senator, he has continued in that frame of character. [Laughter.]

THE CHAIRMAN. Well, thank you very much, Mr. Kelley.
(Mr. Kelley's prepared statement is as follows:)

TESTIMONY OF ROBERT H. KELLEY

My name is Robert H. Kelley. I am a practicing attorney at law, residing and having offices in Houston, Tex. I was born in Houston, and have practiced law there since the summer of 1910.

I am a citizen of the United States and a member of the bars of the Supreme Court of the United States, the Court of Appeals for the Fifth Circuit, the U.S. District Court for the Southern District of Texas, and of the Supreme Court of Texas.

I received an A.B. degree from the Catholic University of America, and in 1958 the honorary degree of doctor of laws from the same institution. From the University of Texas in 1910 I received the degree of LL.B.

I am also a member of the Sons of the American Revolution and the Society of the Ark and the Dove, which latter is composed of the lineal descendants of the first colonists of Maryland who, in 1634, came to this country on those ships.

I am not and never have been a member of the Communist Party, and have no need of the fifth amendment.

I am opposed to Senate Resolution 94 for the reasons below stated:

On July 4, 1959, the State bar of Texas in general assembly adopted by a large majority a resolution on this subject, as recommended by its resolutions committee. It thus took a position directly opposed to that of the American Bar Association.

The Texas resolution reads as follows:

"Whereas a proposal to subject the United States to the compulsory jurisdiction of the Court of International Justice (commonly and hereafter called the World Court) has recently been submitted to the Senate of the United States (S. Res. 94, Congressional Record, pp. 4510-4513), whereby if adopted this Nation would relinquish completely its power to determine unilaterally that any case brought against the United States in the World Court is exclusively within its domestic jurisdiction, and therefore wholly beyond the jurisdiction of the World Court; that power having been preserved to the United States by the Connally resolution of 1946 (S. Res. 106, 79th Cong., 2d sess.); and

Whereas the World Court is composed of 15 members or judges, of which one is a citizen of the United States and the others are nationals or citizens of Egypt, Nationalist China, Australia, Greece, Poland, France, Mexico, El Salvador,¹ Britain, Argentina, Uruguay, Norway, Pakistan and Soviet Russia; that is, two are from Moslem nations, one is a Chinese, two are Communists, three are from common law countries, four are Latin Americans, and one each is from Greece, France and Norway, the President of the Court being a Norwegian and the Vice President from Pakistan; and

Whereas the World Court is a tribunal in no way bound to or guided by any definite rules or system of law such as the common law or the American system of constitutional law, and it is therefore entirely free, by the statute of its creation to follow to whatsoever judgment they may lead in any particular case, the whims and caprices engendered from time to time by national pride or interest, envy, greed, or actual hostility; in other words, the World Court is clearly subject to the criticism voiced by Thomas Jefferson when we wrote, "Let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution;" and

Whereas the jurisdiction of the World Court includes "all matters specifically provided for in the Charter of the United Nations or in treaties and conventions in force" (Stat., art. 36), and the Charter of the United Nations expressly excludes from its jurisdiction "matters which are essentially within the domestic jurisdiction of any State," (Charter, ch. 1, art. 2, par. 7), nevertheless, one of the first actions of the General Assembly of the United Nations was, by vote, to override the contention of France that matters in controversy between its

¹ Succeeded by a national of Panama.

government and the people of Algeria were matters "within the exclusive domestic jurisdiction" of France, on the ground that Algeria was not a colony but was an integral portion of the Republic of France; and there is no reason to expect that the World Court or any other portion of the machinery of the United Nations may not likewise overrule any contention of the United States that any other matter is "essentially within its domestic jurisdiction" if this country should surrender its power, now expressly reserved, to determine that question unilaterally; and

Whereas it has been claimed that the Court's paucity of business (10 or 11 cases decided in more than 10 years) is due to the fact that few if any nations have submitted themselves unreservedly to the jurisdiction of the Court (those not so submitting unreservedly including the United States and all the Communist nations), although it may as readily be inferred that few if any countries sufficiently imprudent, under the circumstances herein recited, to submit to the unpredictable judgments of such a tribunal questions that they may regard as being "essentially within their domestic jurisdiction"; and

Whereas relinquishment by the United States of the power to determine unilaterally that any case brought against it in the World Court is exclusively within its domestic jurisdiction would—

(a) seriously impair the sovereignty of the United States and of the several States composing it;

(b) effectively vest the power to amend the Constitution of the United States in a tribunal essentially foreign, not necessarily competent, probably political rather than juridical in its attitudes and decisions, possibly dominated by our enemies and therefore likely disposed to be hostile to the major interests of the United States; and

(c) unnecessarily and dangerously weaken and impair the ability of the United States to defend itself against enemy aggressors; and

Whereas the proposal so made, and now pending before the U.S. Senate, is being vigorously supported (without, we think, an adequate understanding or appreciation of its reach or dangers) by many influential public officers, individuals, and national organizations, who may succeed, in the absence of determined opposition, in having the said proposal adopted by the Senate; and

Whereas the members of the State bar of Texas are not only devoted to our State and National Constitutions and forms of government, but are bound by oath to support and defend those Constitutions; Now, therefore, the State bar of Texas, in annual session assembled at Dallas, does hereby

Resolve—

1. That it does hereby condemn, as unwise, un-American and extremely dangerous to posterity as well as to American citizens now living, the proposal contained in the Senate resolution mentioned above.

2. That a certified copy of this resolution be promptly sent to the President and Vice President of the United States, to each of the U.S. Senators from Texas, and to the president of the American Bar Association.

3. That each member of the State bar of Texas is hereby urged to write, as soon as may be, to our Texas Senators urging them, as they love their country, to vote against the proposal, and to use their influence with other Senators to do likewise.

In view of the conflict of opinion between the State Bar of Texas and the American Bar Association, it appears appropriate to give a statement of the reasons advanced in support of the resolution to the resolutions committee and general assembly of the State Bar of Texas. These reasons may be summarized as follows:

The Charter of the United Nations (art. 93) states: "All members of the United Nations are ipso facto parties to the Statute of the International Court of Justice," which "shall be the principal judicial organ of the United Nations" (art. 92). "The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question." So, under certain circumstances, may other "organs" and "specialized agencies" of the United Nations (art. 96). The "statute" of the Court is an integral part of the United Nations Charter (art. 92).

No member of the United Nations is obliged to accept "compulsory jurisdiction" of the Court save as expressed in a "declaration" filed by it with the Secretary General; that is, no nation member can be sued in or required to answer before the Court beyond the terms of its own declaration. Our "declaration," filed pursuant to Senate Resolution 196, of August 2, 1946, states that

it "shall not apply to * * * disputes with regard to matters which are essentially within the domestic jurisdiction of the United States as determined by the United States."

The words emphasized were added to the Senate resolution by an amendment offered by Senator Connally, of Texas. Without them, the Court itself would be free to decide what is and what is not a question "essentially within the domestic jurisdiction of the United States." A number of other nations have adopted similar reservations in their "declarations." And, the resolution (S. Res. 94), offered by Senator Humphrey, to delete from our declaration the words, "as determined by the United States," is now before you.

Inquiry should probably be made into the meaning of the words "as determined by the United States." In other words, how and by whom should such a determination be made?

The Federal courts will apparently have no jurisdiction to decide this question unless in some way, not now clear, it should arise in a "case" or "controversy" within the meaning of article III of the Constitution.

The President alone, even when acting on the advice of his Secretary of State, is not the United States, although some President may think he is.

Although the question is novel and the words are somewhat ambiguous, it would seem that such a determination might be made by the President, in any particular case, if made pursuant to an act of Congress, which he would have power to approve or veto. As the question involves the practical interpretation of a treaty, some may think that the determination could properly be made by the process involved in the making of a treaty; namely, by the President, acting by and with the advice and consent of the Senate. Of these two alternatives the former may well appear to be more desirable than the latter, because such a determination is not clearly an exercise of the constitutional power "by and with the advice and consent of the Senate to make treaties." In any event, such a method would give all concerned the benefit of a full view, on mature reflection, of all the possible advantages and disadvantages on which a decision might be rested.

This so-called World Court is composed of 15 judges. No nation may have on it more than one judge. We have one. The others are from Egypt, Nationalist China, Australia, Greece, Poland, France, Mexico, Panama, Britain, Argentina, Uruguay, Norway, Pakistan, and Soviet Russia; that is, four are Latin Americans, three are from common law countries, two from Communist countries, two from Moslem nations, and one each is from China, Greece, France, and Norway. The President is a Norwegian and the Vice President is from Pakistan. All judges are nominated by or through governments, and require for election a majority vote in both the General Assembly and the Security Council. The nominations, therefore, being in the end governmental, are strictly political; and no bar association or other professional group may nominate.

To date, the position has been a sinecure. Ten or eleven cases have been decided by the Court in about 10 years. The term of office is 9 years; the judges enjoy diplomatic privileges and immunities; none can be dismissed except by the unanimous vote of the other judges. Each receives a tax free salary (presently \$21,000 per year) fixed by the General Assembly, which "may not be decreased during the term of office," and special tax free allowances are made to the President and Vice President. The Court sits at The Hague, Netherlands; its judges are not bound by oath, but each makes "a solemn declaration" to "exercise his power impartially and conscientiously."

The Court may sit en banc or in divisions or "chambers" of three or more judges, and the statute declares that a judgment rendered by any chamber "shall be considered as rendered by the Court." If a judge sits in any case involving his own country, as he may, "any other party may choose a person to sit as judge." And if the Court, in any case, includes "no judge of the nationality of the parties, each of these parties" may likewise choose "a person;" and "persons" so chosen "take part in the decision on terms of complete equality with their colleagues" (art. 31). No qualifications are prescribed for these "persons."

Article 38 of the statute reads:

"1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply—

"a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

"b. international custom, as evidence of a general practice accepted as law;

"c. the general principles of law recognized by civilized nations ;

"d. subject to the provisions of article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

"2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto."

As practically every lawyer realizes, there are few, if any, settled and universally recognized rules or principles of international law. In certain kinds of maritime matters, such as cases of piracy, salvage, or collision, which probably would not come before the Court, there are fairly well established rules. But, in respect of questions that likely would come before the Court, such as the limitation of actions, national sovereignty, or governmental structure, it actually will be free to apply any rule or principle which may be developed by a majority of the Judges sitting through whim, caprice, national pride or interest, greed, envy, or actual hostility. Certainly there is no requirement that the Court should be guided by the rules of the common law or of the American system of constitutional law, nor is it limited by a written Constitution such as ours.

The Government of the United States is "a government of laws and not of men." The law "is the only supreme power in our system of government." But where the law is vague, obscure or nebulous, any court which might be able authoritatively to apply it to us would transform this Government into one of men—"a tyranny which has no existence" in any "government which has a just claim to well regulated liberty" (*U.S. v. Lee*, 106 U.S. 196, 220).

The United States is apparently the only Federal Union member of the United Nations in which the central government has one group of specified powers, while all others are lodged in the several States. All State powers, and all Federal powers over matters such as immigration, national security, tariffs, naturalization and interstate commerce, would seem to be "essentially within the domestic jurisdiction" of this country. But whether this alien-dominated Court would so decide is entirely problematical. In fact, the disposition of the General Assembly, as evidenced by its decision in the France-Algeria matter, appears to be to regard every question as international. So does our own State Department, as will later be shown.

The States, as the only parties capable of amending our Constitution, ultimately may well find themselves shorn of that power, as well as their other governmental powers, if we should waive our present right of unilateral decision. Bearing in mind (a) that a judge on this Court has a well-paid sinecure; (b) that he is nominated by or through a government or governments; (c) that he can be dismissed only by the unanimous vote of all his associates; (d) that on the expiration of his 9-year term he can be renominated only by or through one or more governments (presumably including his own); (e) that he takes no oath; (f) that he is bound to follow no certain rule of decision; (g) that the judgment of the Court is final and nonappealable; and (h) that the judges are not angels but human beings, what decision can reasonably be expected from them except one consistent with the desires and interests of their own governments? It cannot be presumed that those desires and interests will not be known, or made known, to them.

The Justices of the Supreme Court of the United States, all citizens of this country, where their families and friends usually live, where their property interests generally lie, and whose history and traditions they have, with rare exceptions, if any, absorbed since childhood, shackled by a written constitution which they are bound by oath to support and defend, have never been, and are not now, free from criticism. Their judgments frequently have been bitterly assailed ever since that of 1793 in *Chisholm v. Georgia*. In the light of that history, how can people, otherwise apparently reasonable and patriotic, fail to anticipate that the International Court of Justice, constituted and foot free as it is, may some day, if left unfettered, shatter this Government to its foundations?

Suppose, for instance, that we should amend our declaration as now proposed, and that shortly thereafter the Republic of Colombia, or that of Panama, should sue us in this World Court to recover the Canal Zone and the canal itself, perhaps offering, without compensation to us, to internationalize the canal, which we built and paid for, under the jurisdiction of the United Nations. In such a case what would be the judgment of this polyglot alien court? Eight judges could render judgment against us, or two in a chamber of three. How in such a case, would the four Latin American judges now on the Court vote; how those from Russia, Poland, Greece, Britain, Pakistan, and Norway? We cannot be

certain as to all of them, but some would almost certainly vote against us. If there be any doubt whether such a suit may reasonably be anticipated, in case we should waive our right of unilateral decision, a careful reading of the history of our acquisition of the Canal Zone should dispel it. A like question might also be raised concerning a possible suit by Cuba for the title to and possession of our naval base at Guantanamo.

Why should we take even a minute chance of losing such important elements of our national security? Without unrestricted passage of our ships of war through the Panama Canal, or use of our naval base in Cuba, it is certain that we could not quickly reinforce the defenses of our Pacific coast in the event of another Pearl Harbor, or enforce the Monroe Doctrine. If we are wise we will not; and if we have a decent regard for our posterity, we must not take such a step.

There appears to be no international statute of limitations to prescribe such a suit; or even a statute of frauds. Americans cannot safely predict what judgment the Court might render in such a case. The question has been asked, what law would the Court follow in any given case; and how would the judgment be enforced? Whim, caprice and national interests might well control the form and substance of the judgment.

As to enforcement of the Court's judgments, the Charter of the United Nations fairly bristles (arts. 41-48) with provisions for armed force. Those provisions, it will be recalled, brought American troops into battle in Korea, where some claim they were not permitted to win, and whence many who were captured have never returned. It would be tragic indeed if the slogan, "World peace through law," should later require us to resolve the dilemma. Submission adverse to national security versus arbitrament by armed force.

Deliberately to put our necks under the blade of such an unpredictable guillotine, in the fatuous hope that thereby we may, as some believe, contribute in some undefinable way to the future peace of the world, would seem to be an act completely devoid of wisdom. The general welfare mentioned in our Constitution was not intended to encompass the welfare of the wide world, but that of the United States. As long as this country remains strong and free, and determined to maintain its republican form of government and its power and liberty, it will remain a tower of peace to which the wise may look with hope and possibly pay us the compliment of imitation. Robbed of that governmental structure, that strength and freedom, it may in time become as important as are, today, the ancient city-states of Athens, Sparta, Venice, or Pisa.

It has been said that if the United States will submit unreservedly to the compulsory jurisdiction of the Court, perhaps other nations, such as those in the Communist orbit, may do likewise. It may well be questioned whether the Communists are so naive.

Under the Charter of the United Nations and the so-called statute of the Court, which is a part of that charter, neither the United Nations nor the World Court has any jurisdiction whatever over the domestic affairs of any nation. However, State Department Publication No. 3972, Series 26, entitled "General Foreign Policy," released in 1950, declared in the opening paragraph: "There is no longer any real distinction between 'domestic' and 'foreign' affairs." That may shock you, as it did me; but with an admission of that kind from our State Department, it may readily be assumed that if the World Court is left to decide whether any particular case against the United States involves our domestic affairs, the Court could easily declare that we have none; that no laws of Congress on national security, tariffs, immigration, naturalization, the regulation of interstate or foreign commerce, or any constitutional distinction between Federal powers and State powers, are beyond the reach of its unappealable judgments.

What such a decision might do to the legislative powers of Congress or the State legislatures, or to our Constitution, which, according to its terms, may be amended only by the States, I leave to your imagination.

Other means of resolving truly international controversies are available, but are usually not mentioned by the world peace through law advocates. These include diplomatic negotiations and boards or commissions of arbitration, the personnel of which the parties to a dispute agree upon in advance. Such boards or commissions have disposed in past years of vast numbers of claims and disputes between the United States and other nations, beginning with the arbitrations under the Jay Treaty of 1794, which are said to have disposed of more than 500 claims. More recent ones were the "I'm Alone" controversy between Canada and the United States, and the decisions of the arbitral tribunals set up

after World War I, which may have disposed of more than 70,000 claims. (See M. O. Hudson, *International Tribunals*, Washington, 1944.)

If other nations desire, in good faith, to settle any real international controversy they may assert against this nation, it is difficult to believe that our State Department will refuse to agree with them on the questions to be determined and the particular judges who will be empowered to decide them. Unless and until someone comes forth with a list of such claims, and substantial proof that our State Department has arbitrarily refused to make any agreement whatever to put such claims to rest by arbitration, there would appear to be no reasonable basis to eliminate the Connally reservation, or even to call it a self-judging one, or by any other derogatory appellation.

Under the circumstances, no one can determine in advance the source or sources, or the content, of the rules of law, if such they may be termed, which may be applied by the World Court to the solution of any case; or what "judges" or even what "persons" may sit in judgment thereon.

It has been asserted by one of the most active proponents of the world peace through law movement that the World Court has already built up (by its decisions in less than one dozen cases) a substantial body of international law, on the basis of which decisions in other cases may be rested. Any lawyer who deserves the title knows that the English common law has been developing and growing since, and even before, the days of Lord Coke (1552-1634). Yet, the courts of England, Australia, and the United States, as well as those of our several States, are deciding, almost every month, common law questions which are novel, at least in their own jurisdictions. For the solution of such problems they pick and choose between decisions from other jurisdictions, many of which are conflicting. No such guide-lines will be available to the World Court. Thus if this resolution be adopted, it will truly become an arm of a supergovernment of men and not of laws. Furthermore, several of the cases already decided by the World Court are playtime.

Gentlemen, I have often heard of "buying a pig in a poke." It would seem to be much more foolish, and possibly disastrous, to buy a poke full of snakes and expect to place in it the United States of America, and later to extract it without injury. Having practiced law for nearly half a century, I certainly would not advise a client of mine to make or accept such a proposition for the benefit of his enemies. That this country has enemies, all but the deaf-blind must agree.

This Resolution 94 has been approved by the President, the Vice President, and the Attorney General of the United States, and by various organizations, including the American Bar Association. The latter's journal has published a number of articles in support of the resolution, the latest, in the *American Bar Association Journal* for January 1960, by Prof. Sohn of Harvard, said to be a native of Poland who came to the United States in 1939 and became an American citizen in 1943, and was for a time a legal officer in the U.N. Secretariat (see vol. 30, "Who's Who in America," p. 2591); also he was connected with "World Peace Through World Law," and one of the editors of the *American Bar Association Journal*. This journal, by the way, has never published a single article in opposition to this resolution, and has definitely declined to publish one that I know of. Why it should decline to do so, although it purports to speak for its country-wide membership, I do not know. I do know of quite a few of its members, including myself, for whom it certainly does not speak while it seeks to promote the passage of this resolution.

I never have been and do not pretend to be versed in what is said to be "international law," but in the course of an active practice extending over the better part of a half century I do claim to have learned something about the Constitution of the United States and about courts and judges. I also know that one of the architects of the Charter of the United Nations and of the so-called statute of the Court of International Justice was a man by the name of Alger Hiss.

(Mr. Kelley subsequently submitted the following material for inclusion in the record:)

KELLEY & RYAN,
Houston, Tex., January 29, 1960.

Re Senate Resolution 94.

HON. JAMES W. FULBRIGHT,

Chairman, Senate Committee on Foreign Relations,
U.S. Capitol, Washington, D.C.

DEAR SENATOR FULBRIGHT: On my return home, after testifying on the 27th instant before your committee, I found on my desk a letter from the American

Bar Association Journal, which explains the reason why that Journal refused to publish, as stated on page 13 of the statement filed by me with your committee, the article which I had written and submitted to the Journal for publication.

I hope that you may see fit to include a copy of this letter in the transcript of the hearing in connection with and in explanation of the statement made by me before the committee.

Respectfully yours,

R. H. KELLEY.

AMERICAN BAR ASSOCIATION JOURNAL,
Chicago, Ill., January 26, 1960.

R. H. KELLEY, Esq.,
Houston, Tex.

DEAR MR. KELLEY: This is in reply to your letter of January 20.

Your article was referred to all the members of the board of editors and no favorable vote on it was received. Eight, not including the editor in chief, of the 11 members voted against publication, all of them, I believe, on the ground that our policy is to support the action of the house of delegates speaking for the association and that in general matters affecting policy as promulgated by the house should be argued on the floor of the house and not in the columns of the Journal.

Copies of your letter of January 20 and of this reply are being sent to the members of the board of editors.

Sincerely yours,

LOUISE CHILD,
Assistant to the Editor in Chief.

The CHAIRMAN. We will reassemble here at 2 o'clock. And the next witness on our list is Mr. Taylor, Southern States Industrial Council. However, I believe the sponsor of the legislation may be available.

(Whereupon, at 12:30 p.m., the hearing was recessed, to reconvene at 2 p.m.)

AFTERNOON SESSION

(Present: Senators Fulbright, Green, Humphrey, Hickenlooper, and Aiken.)

The CHAIRMAN. The committee will come to order.

The first witness this afternoon is the Honorable Hubert H. Humphrey, who is the principal sponsor of this resolution.

Senator Humphrey, we are very pleased to have you today.

STATEMENT OF HON. HUBERT H. HUMPHREY, U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator HUMPHREY. Thank you, Mr. Chairman.

First I want to express my pleasure at the splendid testimony which has been given already by witnesses, particularly Government witnesses, in behalf of the resolution, Senate Resolution 94, or the purposes of that resolution.

PURPOSE OF SENATE RESOLUTION 94

When the United States in 1946 filed its declaration of adherence under article 36 of the Statute of the International Court of Justice, it did so with the reservation that it would not apply to—

disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America.

The purpose of Senate Resolution 94, which I introduced on March 24 of last year, is to delete the words of that reservation, "as determined by the United States of America."

Those words, in effect, negate the whole intent and purpose of the declaration of adherence. It is no submission to a court's jurisdiction if you reserve to yourself the power to decide, in every case, whether or not the Court has jurisdiction.

One of the ablest judges of the Court, Judge Lauterpacht of England, has expressed the opinion that a country having a reservation of this sort does not adhere to the Court at all. He says that a reservation of this sort—

deprives the declaration of acceptance of the character of a legal instrument, cognizable before a judicial tribunal, expressing rights and obligations.

He concludes that the United States, never having effectively accepted compulsory jurisdiction of the Court, can neither sue nor be sued before the Court under article 36.

I think it is important that this cloud on our membership be removed.

I digress to point out, of course, Mr. Chairman, that this is the point of view or the attitude as expressed by one distinguished jurist. This may be subject to some other interpretation.

DOUBLE-EDGED EFFECT OF RESERVATION

Now, the clause that I referred to, that is, the reservation, has a double-edged effect. On the one hand, it allows us unilaterally to decide whether or not any case falls within the Court's jurisdiction, if another nation attempts to bring us before this tribunal.

But on the other hand, the Statute of the Court provides that every party to a dispute may assert each and every right that its opponent has; so, whenever we bring suit, our opponent is also entitled to avail itself on this same right to decide, by itself, unilaterally, whether the case is subject to the Court's jurisdiction. We are, therefore, impotent to bring any nation before the tribunal against its will so long as we have this reservation.

COURT'S LACK OF JURISDICTION OVER DOMESTIC MATTERS

Mr. Chairman, none of us believes that the Court should have jurisdiction over disputes with regard to matters which lie within the domestic jurisdiction of the United States.

I want to repeat that the Statute of the Court makes it crystal clear that those disputes which lie within the domestic jurisdiction of a country are not to be subject to the Court's jurisdiction.

Senate Resolution 94 does not disturb the reservation in our declaration of acceptance which excludes domestic matters from the Court's jurisdiction. I emphasize this point, Mr. Chairman, in view of the misunderstanding in certain quarters as to the scope and intent of my resolution. I invite the committee's attention specifically to page 2 of my resolution, beginning at line 14, which provides that our declaration of acceptance of jurisdiction of the Court shall not apply to—
disputes with regard to matters which are essentially within the domestic jurisdiction of the United States * * *

Further, the Statute of the Court does not confer upon it any jurisdiction over domestic matters. Article 36 specifically limits the Court's jurisdiction to legal disputes concerning—

- a. the interpretation of a treaty;
- b. any question of international law;
- c. the existence of any fact which, if established, would constitute a breach of an international obligation;
- d. the nature or extent of the reparation to be made for the breach of an international obligation.

And finally, the U.N. Charter, of which the Statute is a part, provides in chapter I, article 2, section 7, that—

Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter * * *

So, regarding some of these fears, Mr. Chairman, that have been expressed in the literature which seems to be flooding the country, in order to fan what I consider to be emotion on the subject, this matter of domestic jurisdiction has been properly handled, carefully guarded in both the Charter of the United Nations and the Statute of the Court.

VEITO EFFECT OF RESERVATION

The effect of my resolution would be to remove the so-called reserve clause and allow the court to decide what is domestic and what is not. By the present language, the United States may use as a complete defense to any case brought against it in the Court, however plainly not a domestic matter, the fact that the United States had itself determined the case to be a domestic case. In short, the United States reserved to itself a veto power with respect to the jurisdiction of the International Court of Justice.

And I might add, we have conferred an identical right, to be asserted in cases against us, upon all of our adversaries. This is no way to achieve international justice, and I might add, no way to protect the legitimate interest of the United States, both political and commercial.

REASONS FOR RELIANCE ON THE COURT

The question may well be asked whether we can safely rely on the Court itself to decide whether or not disputes are essentially matters of domestic jurisdiction.

The answer to this question lies in the history and the composition of the Court. I hope there will be spread upon the record of these hearings a list of the judges of the Court since its creation, and a summary of the decisions it has made. (See Appendix A, pp. 265-281.) When these are studied, I am sure you will conclude, as the American Bar Association in a section report of last August—"The Self-Judging Aspect of the U.S. Domestic Jurisdiction Reservation with Respect to the International Court of Justice"—concluded:

The decisions of the Court lead us to the conclusion that it has acted with conservatism, and has given reason for more confidence in its judicial standing, scholarship and impartiality than has in fact been generally accorded it by the various nations.

RESERVATION'S EFFECT ON U.S. COMMERCIAL INTERESTS

At the present time the Court is more of a hope than an actuality.

The Court, which is in essence a continuation of the League of Nations Permanent Court of International Justice, began its work in April 1946. In the 14 years that have intervened less than four cases a year have been submitted to it.

Obviously, Mr. Chairman, an international court would be a most useful device to expedite the affairs of nations in this modern era. And obviously, too, it would be particularly useful to the United States, the world's most important trading nation, and inevitably, the world's most important claimant nation, if effective judicial machinery were established.

As a matter of fact, I consider the present reservation a very serious blow to America's interests, both politically and commercially, and surely one that has cost the United States untold millions of dollars in terms of the settlements of disputes between nations on economic or commercial matters.

During these hearings you will hear some of the leading members of the American bar, men who are familiar with the intricacies and problems of foreign trade and international controversy. I believe they will tell you why they, and the American business community who are their clients, are interested in the establishment of workable judicial machinery for the settlement of disputes so that world commercial and government relations may be conducted on a more orderly basis.

SETTLING INTERNATIONAL DISPUTES BY PEACEFUL METHODS

But over and above this need for instrumentalities to expedite the routine handling of international business are certain broad principles. As a nation we have steadfastly maintained the principle of law and order in the international community. We have tried to act justly and we want others to act justly toward us. We want to settle international disputes by peaceful methods, at least so we say, and I believe we mean it; and my purpose in offering this resolution is to provide some of the machinery that will make possible an equitable adjudication of the disputes.

President Eisenhower and others have made frequent reference to the need for a rule of law in world affairs. I am heartily in accord with this, the more so because of my experience in the disarmament field where it becomes increasingly clear that only a body of law, enforceable before duly constituted international tribunals, can insure the smooth operation of an effective disarmament arrangement.

I certainly do not envision any such large role for the present International Court of Justice, but I do feel that we must make certain efforts to enlarge the role of the Court and to create a tradition in international jurisprudence.

OTHER COUNTRIES HAVING SIMILAR RESERVATIONS

At the present time 6 of the 38 nations which accept the Court's compulsory jurisdiction have so-called reserve clauses in their declarations. These countries are the United States, Mexico, Liberia, the

Union of South Africa, Pakistan, and the Sudan. France had a reserve clause, but withdrew it on July 10 of last year.

It is notable that no nation had, as a condition to its adherence, reserved the right to judge unilaterally for itself whether matters lay within its domestic jurisdiction until after the United States had done so in 1946. In other words, we were the pace setter.

COMMUNIST ATTITUDE TOWARD THE INTERNATIONAL COURT

It is interesting to note, at this point, that not a single one of the nations which have accepted the compulsory jurisdiction of the Court is Communist-controlled. The Communists—from Mr. Khrushchev on down, have been busily creating the impression that they are the true crusaders for peace. But when it comes down to cases, such as accepting the International Court of Justice, the Communist nations turned their backs.

I find us in a rather embarrassing position. We are apparently more hypocritical. We have accepted the Court's jurisdiction without giving it any cases.

The Communists say they do not want the Court's jurisdiction, and the attack against the Court is really quite disturbing to me because it sort of coincides with the constant attack which is leveled against the Court from the Communists, and I would like to see all Americans take a very forthright stand on the matter of rule of law, rule of justice. It saddens me when I see literature and pamphlets and folders which, for all practical purposes, substantiate the Communists' purposes of claim about the Court. I feel that this is most unfortunate.

VALUE OF COURTS TO CREDITOR NATIONS

Now, Mr. Chairman, if we rightly understand the self-interest of the United States, courts are most valuable to nations who wish to enforce agreements and the United States is the world's leading creditor nation. Throughout the world nations, individuals, and corporations, have debts and contract obligations to American nationals and to the Government itself. Clearly, even in the most narrow terms, it is to our interest to enforce these obligations in courts of law rather than to resort to more tedious processes or to be placed in the sometimes ridiculous and sometimes dangerous position of having nothing to rely upon but the show of force; and, obviously, a great desire and a great unwillingness to use force.

RESOLUTION IS A LIMITED STEP FORWARD

In an age when atomic weapons are coming to be regarded as part of the conventional equipment of the ordinary combat unit, we cannot afford to neglect every opportunity to create what the late John Foster Dulles called legal institutions of peace.

But I would like to make it clear that I am not sponsoring this resolution on the broad ground that a more effective Court will save the peace. I sponsor it only as one step, and I might add a limited step, which will make a modest contribution toward the solution of certain types of international disputes.

EXCHANGE OF CORRESPONDENCE BETWEEN SENATOR HUMPHREY
AND PRESIDENT EISENHOWER

I am very pleased that President Eisenhower is in full support of this resolution. On October 21, 1959, I wrote to the President and respectfully urged him to give full backing to my proposal. The President in a letter of reply on November 17, 1959, clearly stated his desire that this resolution be approved by the Senate. I quote from the President's letter:

The administration supports elimination of the automatic reservation to the Court's jurisdiction by which the United States has reserved to itself the right to determine unilaterally whether a subject of litigation lies essentially within domestic jurisdiction. I intend, therefore, on an appropriate occasion, to restate to the Congress my support for the elimination of this reservation. Elimination of this automatic reservation from our own declaration accepting compulsory jurisdiction would place the United States in a better position to urge other countries to agree to wider jurisdiction of the International Court of Justice.

I ask, Mr. Chairman, that the exchange of correspondence between the President and me as it appeared in the Department of State Bulletin of January 25, 1960, be inserted at the conclusion of my testimony in the printed hearing record.

The CHAIRMAN. Without objection.

(The exchange of correspondence referred to is as follows:)

PRESIDENT EXPRESSES VIEWS ON WORLD COURT AND DISARMAMENT

Following is an exchange of letters between President Eisenhower and Senator Hubert H. Humphrey which was made public by Senator Humphrey on November 27.

PRESIDENT EISENHOWER TO SENATOR HUMPHREY

AUGUSTA, GA., November 17, 1959.

DEAR SENATOR HUMPHREY: I write now in further reply to your letter of October 21, 1959.

One of the great purposes of this administration has been to advance the rule of law in the world, through actions directly by the U.S. Government and in concert with the governments of other countries. It is open to us to further this great purpose both through optimum use of existing international institutions and through the adoption of changes and improvements in those institutions.

Timely consideration by the United Nations of threatening situations, in Egypt in 1956, in Lebanon in 1958, and in Laos in 1959, has made an important contribution to the preservation of international peace and security. The continued development of mutual defense and security arrangements among the United States and a large number of free world countries has provided a powerful deterrent against international law-breaking. One cannot, however, be satisfied with the way events have developed in some areas—for example, Hungary, and Tibet. The international community needs to find more effective means to cope with and to prevent such brutal uses of force.

One of the principal efforts of the United States in the last half dozen years has been to devise effective means for controlling and reducing armaments. Success in this quest will bring greater security to all countries and lift the threat of devastating nuclear conflict. In order to make progress toward the goal of complete and general disarmament expressed in the United Nations resolution¹ recently sponsored by the United States and the other members of the General Assembly, this Government has followed the policy of seeking reliable international agreements on manageable segments of the whole arms problem.

¹ For text, see Bulletin of Nov. 23, 1959, p. 766.

I am hopeful that the current Geneva negotiations on discontinuance of nuclear weapons tests will produce agreement.² A resulting treaty would, of course, be submitted to the Senate.

Next year the United States will be participating in further disarmament efforts to be undertaken by a group of 10 nations which will, as appropriate, report on its progress to the United Nations Disarmament Commission and General Assembly.³ The best and most carefully elaborated disarmament agreements are likely to carry with them some risks, at least theoretically, of evasion. But one must ponder, in reaching decisions on the very complex and difficult subject of arms control, the enormous risks entailed if reasonable steps are not taken to curb the international competition in armaments and to move effectively in the direction of disarmament.

As you know my message to the Congress on the state of the Union in January 1959,⁴ and from expressions by the Vice President,⁵ the Secretary of State,⁶ and the Attorney General,⁷ the administration is anxious to contribute to the greater effectiveness of the International Court of Justice. The administration supports elimination of the automatic reservation to the Court's jurisdiction by which the United States has reserved to itself the right to determine unilaterally whether a subject of litigation lies essentially within domestic jurisdiction. I intend, therefore, on an appropriate occasion, to restate to the Congress my support for the elimination of this reservation. Elimination of this automatic reservation from our own declaration accepting compulsory jurisdiction would place the United States in a better position to urge other countries to agree to wider jurisdiction of the International Court of Justice.

I appreciate having your views on this vitally important subject.

Sincerely,

DWIGHT D. EISENHOWER.

HON. HUBERT H. HUMPHREY,
U.S. Senate,
Washington, D.C.

SENATOR HUMPHREY TO PRESIDENT EISENHOWER

OCTOBER 21, 1959.

THE PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: In your state of the Union message on January 9, 1959, you declared it to be your purpose to intensify our efforts to the end that the rule of law may replace the obsolete rule of force in the affairs of nations. In particular, you advised the Congress to expect a more specific proposal from you, dealing with the problem of our relationship to the International Court of Justice. Subsequently, the Vice President and the Attorney General have delivered important addresses citing your concern with this problem.

Along with many other Members of Congress in both parties, I was delighted to note this emphasis on a program of strengthening the Court. An American initiative along this line would, I know, be welcome throughout the world.

In selecting for first attention the problem of the American relationship to the Court itself, you have I believe, made a wise judgment. In particular, the reservation to ourselves of the right to determine whether a case lies within our domestic jurisdiction, should be eliminated as soon as possible. Since reservations of any party automatically accrue to its adversary, this reservation probably will be used against our interests more frequently than it is used in our behalf.

I should like to say, Mr. President, that the initiatives you have taken toward the establishment of an international rule of law are most welcome. They have my wholehearted support, and, I am confident, the support of most Members of the Congress.

Senate Resolution 94⁸ supports your position in this matter. The State De-

² For a statement by the chairman of the U.S. delegation, see *ibid.*, Jan. 18, 1960, p. 79.

³ For background, see *ibid.*, Jan. 11, 1960, p. 45.

⁴ *Ibid.*, Jan. 26, 1959, p. 115.

⁵ *Ibid.*, May 4, 1959, p. 622.

⁶ *Ibid.*, Feb. 23, 1958, p. 255.

⁷ *Ibid.*, Sept. 14, 1959, p. 379.

⁸ S. Res. 94 calls for U.S. renunciations of the right to declare an international legal dispute as "essentially domestic" and for acceptance of World Court jurisdiction in such disputes regarding interpretation of treaties, any questions of international law, breaches of international obligation, and reparations.

partment has advised the Foreign Relations Committee that it is in agreement with this resolution. There is considerable support among members of the Foreign Relations Committee for this step toward greater participation in the Court, but there is a general feeling, which I share, that since you have indicated a desire to speak further on this subject, final action should be held in abeyance pending your message.

I regret very much that the first session of the present Congress has adjourned without receiving your message on this important subject.

I respectfully urge you to give this further consideration. I hope that you will, either in your next state of the Union message or in a special communication, advise us of the broad policies which guide the U.S. Government in its efforts to establish a rule of law in the world, and also describe the specific measures which Congress should pass to aid in accomplishing this general purpose. Since Senate Resolution 94 is now widely understood and has been fully discussed in the press, and since the withdrawal of the self-judgment aspect of the domestic jurisdiction reservation is an obvious first step, I hope your message will contain a plea for the early passage of Senate Resolution 94.

The enunciation of general principles of long range foreign policy are most useful. The public acceptance of these broad principles will be bolstered by concrete proposals. It is with this in mind that I have introduced Senate Resolution 94, which is admittedly only a very small step toward the greater common goal which we share. With your support I am confident that the Senate will accept this measure, and we will then be able to look toward the further establishment of what our late Secretary of State, John Foster Dulles, called institutions of peace.

Advocacy of measures looking toward the establishment of a just and lasting peace has always been urgent. It is particularly urgent now, after the recent visit of the Soviet Chairman, to make it doubly clear to the entire world that, while we shall strive mightily for a peaceful resolution of Soviet-United States differences, our goal has not shifted toward a two-power world; rather we continue to look resolutely toward an international system in which the rights of all nations will be respected, regardless of size or military power.

An American expression of confidence in the Court at this time would be of tremendous value and I hope you will find an early occasion to express your personal support of legislation to make our American membership in the Court what it should be.

Respectfully yours,

HUBERT H. HUMPHREY.

PRESIDENT'S COMMENTS ON SENATE RESOLUTION 94 IN STATE OF THE UNION MESSAGE

Senator HUMPHREY. The President in his state of the Union message to the Congress on January 7, 1960, again indicated his support:

In 1946 we accepted the Court's jurisdiction, but subject to a reservation of the right to determine unilaterally whether a matter lies essentially within domestic jurisdiction. There is pending before the Senate, a resolution which would repeal our present self-judging reservation. I support that resolution and urge its prompt passage. If this is done, I intend to urge similar acceptance of the Court's jurisdiction by every member of the United Nations.

AMERICAN BAR ASSOCIATION'S VIEWS ON SELF-JUDGING RESERVATION

I am also very pleased to be able to report that repeal of our self-judging reserve clause is endorsed by the American Bar Association. In 1946 at the meeting of the Association's Assembly in Atlantic City, a resolution was adopted which provided:

Now, therefore, be it resolved that the Senate of the United States should reconsider the subject of the declaration of compulsory jurisdiction, and should eliminate therefrom the right of determination by the United States as to what constitutes matters essentially within the domestic jurisdiction, * * *

The House of Delegates of the American Bar Association at its midyear meeting in Chicago in February 1947 also urged deletion

of the reserve clause. The resolution adopted by the House of Delegates recommended—

that the Senate authorize the filing of a further declaration which shall not contain the (self-judging) reservation. * * *

I ask that this resolution appear in full in the printed hearing record at the conclusion of my testimony.

The CHAIRMAN. Without objection, it is so ordered.

Senator HUMPHREY. These endorsements of the American Bar Association's Assembly and House of Delegates still stand and represent the considered judgment of this distinguished body of lawyers.

INTERESTS SERVED BY WITHDRAWAL OF SELF-JUDGING RESERVATION

As we approach a series of summit talks it is quite important for us to reaffirm to all the nations of the world, small as well as large, that the United States does not stand for the proposition that the world's problems are to be settled only in private conclaves of the most powerful. We must reiterate the proposition that we stand for a world in which small nations as well as large will be able to obtain justice without reference to military strength or strategic position. We have aided the United Nations to create a climate in which small nations have found a voice. But in the United Nations all delegates represent the interest of their particular governments. The Court is unique in that it is an international body whose members, the judges, are expected to represent the accepted body of international law.

I sincerely believe that we will be serving the immediate interest of the United States and the long-range interest of the United States and the long-range interest of world peace by immediately withdrawing the self-judging reservation to our adherence to the Court.

That is my statement, Mr. Chairman.

RESOLUTION ADOPTED BY AMERICAN BAR ASSOCIATION

(The resolution adopted in 1947 by the American Bar Association is as follows:)

Resolution Adopted by the House of Delegates of the American Bar Association in February 1947 Recommending Deletion of the Self-Judging Reserve Clause to Our Acceptance of the International Court of Justice

"* * * the Association is of the opinion that the prestige and authority of the Court and the leadership of the United States in behalf of the peaceful settlement of international disputes require that a further step be taken, through withdrawal of the reservation put in the declaration by virtue of the Connally amendment of the Morse resolution (S. Res. 196), whereby either the United States or an adverse party, rather than the Court, would determine whether a particular dispute between them is excluded from the Court's jurisdiction because of its connection with matters 'essentially within the domestic jurisdiction' of the party so deciding;

"*Resolved further*, That the Association is of the opinion that the retention of such a condition in the American declaration, as well as any future reliance on it, would be incompatible with the announced purpose of the United States to join in giving to the Court a broad jurisdiction; and if followed by other nations in filing or renewing their declarations, would mean that the United States had created the precedent for a serious backward step through narrowing and impairing the jurisdiction which many countries have vested in the Court;

"*Resolved further*, That the Association, for the fulfillment of the objectives which it has strongly urged for many years in behalf of international law and adjudication, now recommends to the Senate and Government of the United

States that they reconsider the subject matter of the declaration deposited on August 26, 1916, and that the Senate authorize the filing of a further declaration which shall not contain the reservation or condition to which the foregoing resolutions relate."

ISSUES INVOLVING THE PANAMA CANAL

The CHAIRMAN. Thank you, Senator Humphrey.

I guess you know we had the Secretary of State and the Attorney General here this morning on behalf of this resolution.

Senator HUMPHREY. Yes.

The CHAIRMAN. In the discussion this morning several people raised the question about the Panama Canal as an illustration of the possible interference in our internal or domestic affairs.

Do you have any comment to make about that situation? As you know, it has been urged before as an objection to the removal of this reservation.

Senator HUMPHREY. Yes.

My comment would be, first, that we seek the legal counsel, the advice of the chief legal officer of our Government, who is the Attorney General.

Our relationships relating to the Panama Canal, as I recall, are outlined in a treaty between ourselves and the Republic of Panama, and whether or not in that treaty we have reservations which are conclusive—which I believe they are—as to the domestic aspect of the Canal Zone, our chief legal office could best advise us.

The Canal Zone is considered an American position, even though the jurisdiction or the legal requirements of the Canal Zone, the outline of the Canal Zone are, as we know, bound by treaty.

I would suggest rather than acting as sort of a thumbnail lawyer here that we try to seek the advice and counsel of the State Department, No. 1; but more importantly, the Attorney General who is the President's main legal adviser.

The CHAIRMAN. Really what I had in mind is this: Do you see any great danger in the continuation of the control of the Canal through some legal action through the Court?

Senator HUMPHREY. None whatsoever; none whatsoever because of the treaty, which is a legal instrument in international law between the respective parties, the Republic of Panama and the United States.

There may be an instance in which the interpretation of that treaty relating, for example, to the question of whether or not you can have two flags over the Canal—which the President thought was not such a bad idea—might be brought into the jurisdiction of the Court. Even of that I am not sure.

It would be my feeling, and I can only give my own individual feeling on this, and I am aware of this problem, that the examination of the treaty indicates clearly that the Canal Zone is an American possession and, as such, is in the domestic jurisdiction of the United States.

Now, as to the use of the Canal, there may be some international implications, and that might come within the jurisdiction of the Court relating to the interpretation of provisions of the treaty that concern the use of the Canal. But, again, I would say there are two offices which ought to be consulted, the general counsel of the State De-

partment, who is the Legal Adviser, of course, to our Secretary of State; and the Attorney General, who is the chief legal adviser of the Government.

The CHAIRMAN. The Senator from Iowa. Do you wish to question Senator Humphrey?

Senator HICKENLOOPER. Yes, just one or two questions, Mr. Chairman.

I am not so sure what the status of the Panama Canal is in my own mind. I think the treaty recites that residual sovereignty resides in Panama, but to all other intents and purposes we have jurisdiction. Whether we have sovereignty or not I am not sure.

Therefore, in the minds of the Court, it might be taken somewhat out of the position of a U.S. possession; I just do not know.

Are you yourself willing to have the matters involved in the treaty with Panama and the Panama Canal, between Panama and the United States, submitted to and resolved by the International Court?

Senator HUMPHREY. I would suggest, Senator Hickenlooper, that this is a matter that ought to be commented upon by the State Department and the Attorney General.

I have no doubt in my own mind, or I would not be advancing this resolution, that our interests are well safeguarded. I think they are better safeguarded, I might add, in the jurisdiction of the Court than they are in the hurly-burly of power politics, where we may lose the Canal forthwith just on account of the fact that we cannot afford to stand up and fight for it.

I want the Canal. I think it is a vital part of our transportation and our system.

DEFINING THE COURT'S JURISDICTION

Senator HICKENLOOPER. That is getting into the question of practicality—we are dealing here with a question of basic law, jurisdiction, and acquiescence in jurisdiction.

Now, do you agree that in most countries of the world the judiciary is controlled to a great extent, in fact its limitations and its province are pretty well defined, by statute.

There are some countries, I think, a few, where there may be absolute sovereignty in a sovereign, and in which that sovereign may appoint judges who can, in the name of the sovereign, do practically whatever they please on the bench in the name of an absolute monarch. But I am talking about the overwhelming number of countries in the world. Don't you agree that their courts are governed by a substantial body of existing law?

Senator HUMPHREY. I do not profess to be enough of a student of the courts of the world to make a value judgment on that, Senator.

I do profess to be able to read the Statute of the Court which states very clearly the jurisdiction of the Court in all legal disputes concerning four areas: the interpretation of a treaty; any question of international law—and a body of international law is just about as well accepted as the body of common law; the existence of any fact which, if established, would constitute a breach of an international obligation; and the nature or extent of the reparation to be made for the breach of an international obligation.

The Statute is about as clear as you could expect to have in outlining the jurisdiction of any court, and this is not exactly a new proposal—we have been attempting, as a nation, since the time of the Hague, well back in 1910 and 1911, and up through the League of Nations, to get a World Court.

We are the daddies of it, so to speak, and after the child is born, why, we insist on locking it up in a closet.

Senator HICKENLOOPER. Well, that has been our ambition, and I think it should continue to be our ambition, to get some kind of a forum in which, I will say, performable results can be hoped for. Whether you can call them enforceable results or not is another thing.

Senator HUMPHREY. Yes, I stand up for that.

Senator HICKENLOOPER. We have had some experiences with the United Nations, some of them good, some of them bad. Unfortunately, as encouraged as we either were or have been or may be now about the United Nations, we find some very disappointing things in the United Nations, and a total failure of certain nations to live up to what we believe to be their obligations in the United Nations.

We, as the United States, have vast interests, not only to our own people, but we have vast interests in the future of the world; I think, that is, vast interests that affect the future of the world.

Now, my concern in this is, are we willing to turn over completely, and without any ability to put on the brakes, to a World Court composed of individuals, many of whom do not have exactly the same concept of legal justice that we have, the right to make determinations vitally affecting the entire future of the United States, unless there is a pretty clearly determined body of law delimiting their authority or describing it or establishing it other than what we may call treaty and international custom and things of that kind.

It is a very difficult thing; I imagine it would not be easy, to write such a code.

Senator HUMPHREY. Senator, I can understand these apprehensions, and I attempted in my testimony to point out that I did not look upon the Court, that is, the International Court of Justice, as a cure-all or as a major instrument in his quest for peace, but rather as one of the steps, one of the developments.

CONDUCT OF THE COURT

I would only add this, that under the Charter of the United Nations, if we find the Court is abusing what we believe to be our rights, if it is irresponsible, we can withdraw. We are not caught.

It is not as if this is "until death do us part". There is no such commitment, and, according to the American Bar Association, the Court, in its limited experience, has exercised a degree of conservatism and of judicious temperament which has earned its commendation.

Now, the American Bar Association is a very conservative, responsible institution, and I would prefer to take the judgment of lawyers who have concentrated their talents and time upon matters of international law as to whether or not a court had demonstrated the judicious attitude and caution that is required, rather than the fears or the apprehensions of any one of us.

Senator HICKENLOOPER. Well, I cannot quite agree that the Court has demonstrated a profound or judicious attitude, and I say that

with all respect to the very great ability of the members of the Court, and I have the highest regard for their ability.

The Court has, indeed, been circumscribed and been brought up short by these restrictions which have existed, and it has not had a chance to try its wings, so I do not believe it has demonstrated one way or the other, with sufficient historic background, any great sagacity.

Again I want to qualify that by saying that is not in the slightest degree critical of the individuals of the Court. It does not go to that point at all.

But 12 or 13 cases which may have been adjudicated before the Court in 20, 30 years, I do not believe set a pattern in which we are justified, necessarily, in drawing final conclusions about it.

Senator HUMPHREY. I would not say that. I indicated a note of caution in my own testimony, and I said there is an escape clause, namely, that we can withdraw from the jurisdiction.

Senator HICKENLOOPER. I want to talk about that in a minute.

Senator HUMPHREY. The old Court sat from 1922 to 1940, and handled 65 cases. It rendered 32 decisions in contentious cases, and 25 advisory opinions, and 12 cases were withdrawn by the parties.

On February 6, 1946, the United Nations elected 15 judges to the new Court. It first sat on April 18, 1946, and at least 43 cases had been submitted to it by July 1, 1959, and as of that date it had rendered final opinions in 17 contentious cases, 10 advisory opinions, and 7 cases had been dismissed without opinion on the ground that the defendant had not submitted to the Court's jurisdiction in any way.

Now, this is the body of experience that we have to draw on, and the people who have judged that experience, that is, our lawyers in the American Bar Association, gave a favorable report; that is, the conduct of the Court received a commendation. That is the evidence for the Court.

The argument against it is that we are fearful that it may get out of hand. That is not evidence. That is supposition. That is apprehension, and in a court of law, Senator, supposition, apprehension, and circumstantial evidence, hardly are controlling when you have the real evidence to the contrary.

GUIDELINES FOR THE COURT

Senator HICKENLOOPER. Well, the whole situation surrounding this proposal, I think, was expressed this morning by one of the witnesses as an exercise in faith; the bulk of that kind of an argument is, we must take it on faith.

Well, we have to take a great many things on faith; that is very true. But we are dealing with some pretty far-reaching matters affecting our Nation, and I do not know just how far we should go on faith that the Court will be judicious, that it will be allwise, that it will be completely impartial in its approaches, unless there are some more specific guidelines along which it will go.

I think jurists of ability and integrity will follow guidelines. But if you do not have the guidelines, then they are on frolics of their own, governed by their own philosophy in many cases.

Senator HUMPHREY. Could I add, Senator, that there are guidelines that have already been established by the precedent of the Court.

And most of the guidelines of our courts—and I am not a lawyer, but I have studied constitutional law and jurisprudence—particularly the Federal court, and courts of common law, are tradition, precedent, not statute. In the instance of the Court of International Justice we have a series of cases dating from the days of the 1920's on up, plus the fact there have been a number of documents, treatises, written relating to the jurisdiction of the Court. Those are numerous.

I happen to have in my hand here the report of the American Bar Association, and there are all sorts of citations as to the guidelines relating to the Court's jurisdiction: for example, the meaning of domestic jurisdiction, the meaning of jurisdiction of treaties, what we mean by reparations. These are not matters that are without pattern of guidance.

We have been indulging as a world in the matter of international justice for centuries, and great bodies of at least philosophical material have been written on international justice, and a considerable amount of law itself is now accepted among the nations in the form of treaty obligations.

I might add on this matter of faith, Senator—and I do not want to argue the point particularly, because this is all a matter of personal conviction—that I have faith this afternoon that that pilot that is flying up around there in that B-52 is not going to drop that bomb, but I want to tell you that I have met a lot of pilots I would not want to have that much faith in, and I have met a lot of other people like that, too. But I have to have faith in him.

I have faith that our military are going to do the right thing, and I suppose in a sense I have faith that Khrushchev is not going to launch that rocket. I know what the consequences would be, and I imagine he does.

Senator HICKENLOOPER. But I do not believe our faith extends to the point where we just discard all of our arms.

Senator HUMPHREY. Nor would we in the instance of the Court.

WHAT IF COURT ACTS IRRESPONSIBLY?

The Court's enforcement relies upon the very limited sanctions of the United Nations and of responsible action between nations. There are no armies that will march against us if we refuse to accept the act of the Court or the decision of the Court.

What is more, we have a safeguard that is unassailable. If the Court acts in an irresponsible manner we cease to accept jurisdiction. So, in terms of our protection, I might add that the degree of faith that we exercise here is not going to jeopardize our national security.

What I am worried about jeopardizing our national security is the fact of arms and their injudicious use, their reckless use, not by ourselves but some adversary, and over that I have no control, nor do you.

Senator HICKENLOOPER. Well, it is true that we have no control over those matters, and we can get out of this; there is an escape clause here. But that escape clause does not do us much good in connection with a matter that has already been adjudicated while we have submitted to the jurisdiction of the Court.

In other words, our traditions are that we will maintain our obligations. We will do what we say we will.

Senator HUMPHREY. I trust that our-----

Senator HICKENLOOPER. Once a decision is made, which may be very disastrous to the United States, and which we might feel is completely out of keeping with all concepts of justice, as we see it, if that decision goes against us, if we have submitted to the jurisdiction of the Court, we will carry it out.

Senator HUMPHREY. I hope we could.

Senator HICKENLOOPER. And the escape clause would do us no good in that. It would only be for the future.

Senator HUMPHREY. I would hope we would do just as you are saying, Senator, that we would fulfill our obligations under the jurisdiction of the Court once we have accepted the jurisdiction.

But I say with equal candor that if the Court acted irresponsibly, we have a protection in terms of withdrawal.

Furthermore, even a Federal court sometimes has difficulty in asserting its jurisdiction when it comes to enforcement.

The enforcement of court orders is left to the executive branch with the power of the Government of the United States, and in this instance the enforcement of court orders is left to two things: firstly, the willingness of the parties who are participants to the Court's jurisdiction to accept the order; and, secondly, to what limited sanctions could be brought by the United Nations.

I think what we are doing here is learning to crawl before we walk or at least learning to walk before we run. We are seeking to place before the Court certain very limited areas of controversy, and of points of difference, and letting the Court decide.

Senator HICKENLOOPER. That is just the point. How limited are they?

Senator HUMPHREY. So far as I am personally concerned, I would like to see a body of law in this world that would obviate any possibility of any settlement of disputes by force, because I believe the argument about the settlement of disputes by force is for high school debaters. Force today is catastrophe, and, therefore, it seems to me that we ought to be interested, above all people, as a people who are dedicated to the proposition of government by law, in the instruments that make law possible.

ENFORCEMENT OF FEDERAL COURT DECREES

Senator HICKENLOOPER. Well, of course, so far as the Federal courts are concerned, I do not quite agree with you that the enforcement of Federal court decrees are left to the executive. I think the Federal court, 99 times out of a hundred, has complete practical means within its own control to enforce its own decrees through U.S. marshals and other process servers and other force.

I think there are occasions when things get completely beyond the immediate practical enforcement possibilities of that particular court when you may be able to call on the executive for certain assistance. But, generally speaking, our courts not only have the inherent right to enforce their decrees but they have the basic machinery within their control to enforce them.

Senator HUMPHREY. I respectfully disagree, Senator. The court has no machinery within its control to enforce its decrees except the habit of obedience and the respect of people for laws.

The marshals of the United States are executive officers, as are even district judges—I mean district attorneys.

Senator HICKENLOOPER. You try to disobey a Federal court order and see how quick the U.S. marshal throws you in the pokey.

Senator HUMPHREY. Yes, because the executive sees to it that the court orders are enforced.

I know enough about Federal courts to know what enforcement powers the courts have.

The courts have enforcement powers primarily because we know the executive branch will put you in the pokey if you do not obey the court orders, which is just fine.

Senator HICKENLOOPER. We are getting into some fine arguments, but I still assure you that the Federal court has the authority to order the agent of the Federal court to put you in durance vile if you disobey his orders.

Senator HUMPHREY. I remember the famous decision in which President Jackson once said, "Marshall has made his decision. Now let him enforce it."

The CHAIRMAN. Could I remind my colleagues that we have about a dozen more witnesses, some of whom have come long distances, and you two, both being members of this committee, will have ample opportunity to fight all these questions out ad infinitum.

Senator HUMPHREY. I think you are surely right.

Senator HICKENLOOPER. We won't have as much fun.

Senator HUMPHREY. That is right. We won't get you to listen, Mr. Chairman. [Laughter.]

Senator HICKENLOOPER. I surrender.

Senator HUMPHREY. I won't surrender. I yield. [Laughter.]

PROVISIONS IN TREATY WITH PANAMA

The CHAIRMAN. I would like to read, because this question has come up two or three times, and is likely to come up in the future, just two or three sentences from that treaty with Panama, and I think it puts in rather plain language what the situation is. It says, and this is article 2 of the treaty signed in 1903, which is still in effect:

The Republic of Panama grants to the United States in perpetuity the use, occupation, and control of a zone of land and land under water for the construction, maintenance, operation, sanitation and protection of said canal of the width of 10 miles—

and so on. That is the part that is operative, where it describes the land.

And article 3:

The Republic of Panama grants to the United States all the rights, power, and authority within the zone mentioned and described in Article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said Article II, which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.

I think it is pretty clear.

Senator HUMPHREY. I think it is rather clear.

The CHAIRMAN. It is clear what it says.

Is that all you would like to contribute?

Senator HUMPHREY. Yes.

The CHAIRMAN. Well, thank you very much.

Senator HUMPHREY. Thank you very much, Mr. Chairman.

Senator GREEN. I want to ask a question.

The CHAIRMAN. Senator Green?

EFFECT OF RESOLUTION

Senator GREEN. This is just curiosity on my part and not for any information, but in your statement, your plea for the World Court, you properly quote from the resolution, and you say:

It is no submission to a court's jurisdiction if you reserve to yourself the power to decide, in every case, whether or not the court has jurisdiction.

But on the same page of your memorandum, near the bottom, you state:

I invite the committee's attention specifically to page 2 of my resolution, beginning at line 14, which provides that our declaration of acceptance of jurisdiction of the Court shall not apply to "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States."

Why isn't that power to make that decision contradictory to what you are referring to in the first quotation which I read?

Senator HUMPHREY. Senator, if I correctly understand you, what I was saying in the first part was that by removal of the reserve clause we were taking away our own unilateral right to determine what cases were domestic.

Senator GREEN. You are exercising in either case the power of discretion to determine it.

Senator HUMPHREY. The reserve clause leaves the decision entirely in our hands.

Senator GREEN. In one case you say it makes it impossible to come within the general policy, and in the second case you attribute a virtue that is in favor of the provision. Is it not inconsistent?

Senator HUMPHREY. I do not believe it is inconsistent, Senator.

Senator GREEN. The power of decision is given in one case and is taken away in the other and the result in your argument is the same.

Senator HUMPHREY. What we seek to do by the resolution is to leave within the Court's jurisdiction the right to determine whether or not a case that is brought to it is international in character under the terms of the Statute of the Court, or domestic; and if it is domestic, the Court does not have jurisdiction.

Senator GREEN. You do not say any third power decides it.

Senator HUMPHREY. May I find those words again? If I misstated something I surely want to correct it.

Senator GREEN. The first is on the first page.

Senator HUMPHREY. I see, what paragraph would that be?

Senator GREEN. It is the third paragraph on the first page.

Senator HUMPHREY. Yes, where I said it is no submission to a court's jurisdiction if you reserve to yourself the power to decide, in every case, whether or not the Court has jurisdiction.

Senator GREEN. Yes.

Senator HUMPHREY. That is my belief.

Senator GREEN. Now, at the bottom of the same page, it is the second paragraph from the bottom.

Senator HUMPHREY. Yes, sir.

Senator GREEN. You say:

I invite the committee's attention specifically to page 2 of my resolution, beginning at line 14, which provides that our declaration of acceptance of jurisdiction of the Court shall not apply to "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States."

But we are deciding it there.

Senator HUMPHREY. No. All we simply say there is that in our acceptance of adherence to the Court, we say to the Court that those cases which are domestic will not be in the Court's jurisdiction, but we do not leave to ourselves in each individual case the decision to decide it.

Senator GREEN. It strikes me that it is absolutely inconsistent in one place to say they shall not give certain meaning to words, and then directly afterward give that meaning to the words.

Senator HUMPHREY. Well, I do not believe it is contradictory, Senator. I think it might be well if we discuss this together and with the members of the staff, and if there is any contradiction I surely would want to have it clarified, because what I seek to do is to remove the reserve clause which restricted the jurisdiction of the Court on the basis of our own decision. We, in each case, reserve the right to determine whether or not a case falls essentially within our own domestic jurisdiction.

Senator GREEN. Our own decision determines it.

Senator HUMPHREY. And in the resolution before you, that decision would be made by the Court rather than by the United States.

The CHAIRMAN. You will try to clear that up with the Senator, will you, when we meet the next time?

Senator HUMPHREY. Yes, sir. I surely will, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Humphrey.

Senator HUMPHREY. Thank you, Mr. Chairman.

The CHAIRMAN. The next witness is Mr. Tyre Taylor, Southern States Industrial Council.

Mr. Taylor, we are glad to have you. You have a statement?

Mr. TAYLOR. Yes, sir.

The CHAIRMAN. Could we put that in the record and could you summarize it for us, please, sir?

Mr. TAYLOR. Well, it is so brief, Senator, I can read it quicker than I can summarize it.

The CHAIRMAN. All right, then.

STATEMENT OF TYRE TAYLOR, GENERAL COUNSEL, SOUTHERN STATES INDUSTRIAL COUNCIL

Mr. TAYLOR. My name is Tyre Taylor. My address is 1511 K Street NW., Washington, D.C. I appear here on behalf of the Southern States Industrial Council, the headquarters of which are in the Stahlman Building, Nashville, Tenn. The council, established in 1933, includes in its membership virtually all lines of industry in 16 Southern States, from Maryland to Texas, inclusive.

POLICY STATEMENT OF INDUSTRIAL COUNCIL'S BOARD OF DIRECTORS

In a policy statement unanimously approved by the council's board of directors at its annual meeting at Williamsburg, Va., on May 12-16, 1950, it is said:

* * * It [the council] commends the Senate for its refusal to ratify the U.N.-sponsored Genocide Convention and calls upon it to take similar action when and if the U.N.-sponsored declaration of human rights and proposals to expand the jurisdiction of the World Court to include domestic affairs are submitted.

Proponents contend, of course, that the approval of Senate Resolution 94 would not involve any abdication of sovereignty on the part of the United States; that there is no potential conflict between the World Court and our own domestic courts; and that the latter would continue to have and to exercise full and complete jurisdiction over domestic affairs. The council emphatically rejected these contentions and it is to this issue that I shall direct my comments during the few minutes at my disposal.

WHAT ARE "DOMESTIC AFFAIRS" AND WHAT ARE "FOREIGN"?

First, what are "domestic affairs" and what are "foreign"? I am certain that no one in this room would even attempt to give a definitive answer to this question. However, this is not necessary. For in the opinion of the State Department, the World Court itself would make this determination. In a letter dated May 27, 1950, to Representative Boggs, of Louisiana, Mr. William Macomber, Assistant Secretary of State, said--and I quote:

The reservation of a unilateral right to determine whether a particular matter lies essentially within domestic jurisdiction is regarded by some as inconsistent with the provision of the Statute of the International Court of Justice (art. 36, par. 6) whereby the Court is to decide a dispute whether it has jurisdiction in a particular case * * *.

Further on in the same letter he says:

Elimination of the U.S. automatic reservation would not result in conferring jurisdiction on the World Court with respect to disputes over matters essentially within domestic jurisdiction. Disputes of this character would still be subject to exclusion from the Court's jurisdiction under the standard reservation on domestic jurisdiction. The Court would decide in particular cases whether this reservation was applicable * * *.

Despite the State Department's chronic addiction to doubletalk, that is about as plain as they could make it. They have told us in fairly straightforward English, and it was reiterated and confirmed here by the Secretary of State this morning, that if a dispute arises which we regard as involving domestic matters, this Court--this creature and tool of a godless organization, the United Nations--will have the final say. But this is not all. As far back as 1950, the internationalists and one-worlders in the State Department said in an official statement:

There is no longer any real distinction between "domestic" and "foreign" affairs. (Department of State publication 3972--General Foreign Policy Series 26.)

And only last year—May 22, to be exact—President Eisenhower told the students and faculty of St. Johns College, Annapolis:

For us indeed there are no longer foreign affairs and foreign policy. Since such affairs belong to and affect the entire world, they are essentially local affairs for every nation, including our own.

WHAT IF COURT EXTENDS ITS JURISDICTION AS IT WISHES?

When we reflect upon some of the outlandish so-called authorities—including a Swedish Socialist—cited by our own Supreme Court in support of many of its decisions, it is not difficult to imagine the alacrity with which the alien, Communist-infested World Court in which we would have only 1 vote in 15—and even this is not obligatory—would latch on to these loose, irresponsible utterances to justify the extension and exercise of its jurisdiction as it saw fit.

And what could we do about it? Pick up our marbles and go home? Senate Resolution 94 contains a provision that the declaration to which the Senate is asked to advise and consent shall remain in effect until the expiration of 6 months after notice may be given to terminate the declaration. Does this offer a possible out? In theory, it might. As a practical matter, however, Americans are not the kind of people who pick up their marbles and go home. They are not the kind of people who quit when the game is going against them. This view is reinforced when we consider the lethal propaganda weapon such action would place in the hands of the Communists, the fellow travelers, the internationalists, and one worlders. They would call us quitters, welsers, traitors to the ideal of a peaceful world where international disputes would be settled by law, and enemies of peace-loving people everywhere. No—once we are caught in this dastardly trap, I am afraid we are caught for keeps.

In conclusion, it seems to me that any action looking toward the abdication or surrender of the sovereignty of this Nation is not—or at least should not be—within the competence of the Executive or the Congress or both acting together. It should be fully considered, thoroughly debated, and adopted or rejected by the people themselves by the most solemn process known to our Republic—a constitutional amendment.

I thank you, Mr. Chairman and gentlemen.

QUESTION OF WITHDRAWAL FROM THE COURT AND THE UNITED NATIONS

The CHAIRMAN. Mr. Taylor, do you think it would be more proper for us to withdraw altogether from the Court?

Mr. TAYLOR. I am afraid I did not get your question, Senator.

The CHAIRMAN. I mean, do you advocate that we abandon any membership in the Court at all?

Mr. TAYLOR. Well, as long as we have this reservation I think we are pretty safe.

The CHAIRMAN. It was said a while ago by one of the other witnesses that with this reservation it is equivalent to not having accepted jurisdiction of the Court at all, and I gathered some thought it would be more honest and less hypocritical if we just abandoned any membership in the Court at all.

Mr. TAYLOR. I could not quarrel with that view, Senator.

The CHAIRMAN. Do you think it would probably be better to withdraw?

Mr. TAYLOR. I think so, probably, yes.

The CHAIRMAN. Do you feel the same way about the United Nations?

Mr. TAYLOR. Yes, sir.

The CHAIRMAN. Senator Green, do you wish to ask questions?

Senator GREEN. Isn't that the question about which I was asking the witness a question before you took the chair?

Mr. TAYLOR. Which question do you refer to, Senator?

Senator GREEN. The question you are now discussing. It is the same question, is it not, as to the right of withdrawing, and being inconsistent with the obligations that you undertake?

Mr. TAYLOR. I am not sure that I get your question, Senator, but I do not think so.

Senator GREEN. It does not matter because I thought you were raising somewhat the same type of question that I raised with my question to Mr. Humphrey.

Mr. TAYLOR. Well, I could not hear your question, sir.

Senator GREEN. That is all.

The CHAIRMAN. Senator Hickenlooper?

VIEWS ON INTERNATIONAL FORUMS

Senator HICKENLOOPER. Mr. Taylor, do I understand your position to be that you are basically opposed to international forums for the settlement of disputes, such as the United Nations and the World Court? I'm not trying to put words in your mouth, but I am trying to get your position.

Mr. TAYLOR. We think, Senator, that the United Nations has been a great disappointment so far. It has not to me, because I never did think it would do anything, and we see no good to be gained by remaining a member of it.

We think that we should get out of the United Nations and that the United Nations should get out of the United States.

We think that this Court, being a creature of the United Nations, is not only a surrender; it represents not only a surrender of sovereignty, but a very dangerous surrender of sovereignty.

You can imagine if we tried to withdraw what sort of a hullabaloo would be raised by the internationalists and the Communists and everybody else who wanted to put us in a bad light.

Senator HICKENLOOPER. Well, I do not mean to argue the merits or the demerits of the matter, but what I am trying to get at is the burden of your argument, as to whether or not you would support a judicial body or a forum of a judicial nature to which disputes under proper limitations and proper circumscription between nations could be submitted for a decision? In other words, do you agree that that principle is good or bad?

Mr. TAYLOR. I believe it is good, but you said with proper limitations.

Senator HICKENLOOPER. Yes. I put the qualification in, proper limitations. I cannot define the limitations myself, so I did not attempt to.

Do you think that it is within the realm of possibility that proper and workable and adequate limitations might be drawn up or prescribed for such a tribunal?

Mr. TAYLOR. I do, sir, but I do not think this is it.

Senator HICKENLOOPER. That has been the whole burden of the argument this morning as to whether or not it is.

I think that is all, Mr. Chairman.

The CHAIRMAN. Senator Aiken?

Senator AIKEN. No questions.

The CHAIRMAN. Thank you very much, Mr. Taylor.

Mr. TAYLOR. Thank you, sir.

The CHAIRMAN. Mr. John R. Stevenson, chairman of the Committee on International Law of the Association of the Bar of the City of New York.

For the record, Mr. Reporter, the statement which has been quoted here once or twice, and the Senator from Ohio raised a question about it, about there no longer being "any real distinction between domestic and foreign affairs," I would like to insert in the record. The relevant discussion covers only three very short pages.

Senator AIKEN. What are you reading from?

The CHAIRMAN. It is Department of State publication 3872. The foreword is by President Truman, and it is entitled, "Our Foreign Policy, Its Roots."

The purport of the article is that everything we do affects our influence; that we reflect our character, our attitude, and so on. I do not think it is fair to say he undertook to say legally there is no distinction between things. It is a more general treatment, but anyway it speaks for itself, and I think it well to put it in the record at the point where Senator Lausche raised the question.

Senator AIKEN. But it does lend itself to personal interpretations and varying interpretations?

The CHAIRMAN. Everything does to some extent, I guess.

(The extract referred to will be found at the point as directed by the chairman. See p. 65.)

STATEMENT OF JOHN R. STEVENSON, CHAIRMAN, COMMITTEE ON INTERNATIONAL LAW, THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

The CHAIRMAN. Mr. Stevenson, do you have a written statement?

Mr. STEVENSON. Yes, sir. I would like to submit it at the end of my statement.

I would like to summarize the highlights.

The CHAIRMAN. I wish you would summarize it. We have had, as you know, considerable testimony, and I hope you can pick out what you think is most unusual and original.

Mr. STEVENSON. I shall do my best.

BACKGROUND OF WITNESS

I am appearing on behalf of the Association of the Bar of the City of New York, and I am chairman of the international law committee.

The Association adopted this fall a resolution urging the with-

drawal of the self-judging amendment to our domestic jurisdiction resolution.

Similar action had been taken in 1948.

LIMITED NATURE OF COURT'S COMPULSORY JURISDICTION

I would suggest that the first point that I would like to emphasize is the limited nature of the compulsory jurisdiction of the International Court. This is a jurisdiction limited to legal disputes involving treaties, international law, factfinding in connection with alleged breaches of international obligations, and reparation of international obligations.

ASSOCIATION'S OBJECTIONS TO THE RESERVATION

The resolution of the Association of the Bar of the City of New York is not directed against the domestic jurisdiction resolution as such, but simply at the self-judging aspect of this resolution.

We feel, as lawyers, that this violates the fundamental principle that no party shall be a judge in its own case.

Furthermore, looked at from the standpoint of contract law, it is an illusory acceptance. It leads to one of the parties having the right to determine the extent and the very existence of its obligation.

RESERVATION'S INCONSISTENCY WITH SPIRIT OF STATUTE

Some of the earlier witnesses have already pointed out that a number of the most distinguished judges in the International Court, including the judges of England, Australia, Norway, Uruguay, and the late President of the Court, Judge Guerrero of El Salvador, have all indicated in their view the self-judging reservation is invalid.

Two of them have gone further and taken the position that the entire acceptance containing the reservation is invalid.

The case against the self-judging reservation, however, does not rest on whether or not it will ultimately be held to be valid or invalid, but I think the discussion of this matter by these distinguished judges has already shown that it is at least inconsistent with the spirit of the statute, and with the purposes underlying our acceptance of the Court's compulsory jurisdiction.

RECIPROCAL NATURE OF RESERVATION

Next I would like to point out that from the standpoint of lawyers with clients who have international business interests, who have holdings abroad, probably the most detrimental aspect of the self-judging reservation is that it prevents those clients from vindicating their rights where foreign countries act against them or against the United States in violation of international law.

This is because it is clearly understood that any reservation is a two-way street. A reservation operates on the basis of the Court taking a minimum common denominator of the two contesting parties' acceptance of the Court's jurisdiction.

Accordingly, any foreign country which violates international law, and to that extent injures our citizens or otherwise affects our interests, can invoke the self-judging reservation against us.

This is clear from the Court's Statute, and it has been so held by the Court itself in the *Norwegian Loans* case, which you have heard something about earlier this morning.

COURT'S GUIDELINES

I would next like to address myself to a question which Senator Hickenlooper has raised several times, and which I think is an important question, and that is, what are the guidelines that the Court has to keep it from acting in a completely irresponsible way?

Well, in the first place, I should suggest that there is a Statute which tells the Court that it should apply treaties and it should apply not international usage, but only international practice accepted as law, in other words, customary international law.

I think that the problem is not so much existing international law, because I think anyone who looks at the record of the Court in the past in applying international law will see that it has been scrupulous in not accepting as a principle of international law anything that was not clearly established by the practice of states, and by practice I do not mean just usage, but practice with a sense of obligation they had to act that way.

I think the problem is not the past but the future, Senator Hickenlooper. And others have been concerned about what might happen in the future. Well, I think the answer to that is twofold:

NATURE OF INTERNATIONAL LAW

In the first place, it is certainly clear that the matters governed by international law may change. We are certainly living in an age where it is only 7 hours by jet from Paris, and a few minutes by missile from Moscow to Detroit.

However, the greatest area of change is in the treaty area, and certainly I think we should be most careful that we enter into no treaties that we do not actually feel are in the best interests of the United States.

However, the treaties are certainly within our own voluntary control, and it seems to me that if we are going to enter into treaties it would be unconscionable for us to agree that treaties could not be interpreted by an impartial international body.

I do not think on this point the present reservation is going to help us very much because I think it would be very difficult for the United States to invoke the self-judging reservation and say that something was within the domestic jurisdiction, when we had already said that it was governed by international law to the extent of the express obligations we undertook in a treaty.

Therefore, I think the only problem comes down to the growth of customary international law, and I think we are, perhaps, much too much on the defensive on this.

I think it is just as important for the United States to shape the development of customary international law in the future as to be concerned solely about what might happen to it in the future.

Now, I think it is very clear that if we watch very carefully the attempts by other countries to assert a principle of customary international law, principles which are contrary to our interests, we can

make our opposition vocal, and we can get other countries who have the same approach to take the same stand.

Customary international law cannot grow up if we are effective in organizing like-minded nations to express their point of view that this is not the law, because the judges cannot make declarations out of the clear sky. They have to look at the practice of states.

Furthermore, and I think this is the more important point, we have a very great stake in public international law as it exists today.

A great number of the States who have different ideologies than ours have been attempting to whittle away at some of the principles like fair compensation for property of our nationals that they take. To the extent that we are unable to bring them before the International Court we are, in a sense, contributing to the undermining of the basic body of law which is so important to us.

It is terribly important that the basic principles which have been established in the past be preserved, but if we cannot even get the people who are violating international law into court, we are, to that extent, giving up a body of law which is very important to us.

BAD EXAMPLE SET BY OUR SELF-JUDGING RESERVATION

Finally, I would like to emphasize the point that has been emphasized several times before of the bad example that our self-judging reservation has set.

It was the first time that there was such a reservation. Seven other countries have followed it. Two have since withdrawn the self-judging aspects of their reservations.

It has been particularly difficult for the United States, in view of the self-judging reservation, to encourage other countries to accept the compulsory jurisdiction of the Court.

It has also provided a very easy answer for the Soviet bloc when they have been defending their nonparticipation in the Court.

Another area in which the precedent has been bad is with respect to the Soviet's use of the veto power in the political area.

We have been very critical of its unilateral exercise of the veto power, but it is surely very difficult for us to be very effective in this criticism if we maintain and even exercise a veto power in the judicial field.

Furthermore, in the judicial field we will probably have to exercise this power at the outset or at least before cases are considered on the merits, and probably in cases where, in my opinion, the Court would probably hold anyway that it did not have jurisdiction.

So it will be unnecessarily undermining our moral position.

REASONS FOR WITHDRAWAL OF RESERVATION

Finally, I think that the basic reason at this time for urging the withdrawal of the self-judging reservation is that so many people have regarded this as evidence that our support of the authority of international law and the principle of judicial settlement has been equivocal and wavering. This has nothing to do with whether there are any reasonable grounds for concluding that we would exercise this power arbitrarily. I do not think there are such grounds.

However, there is a conviction among many persons, which I share, that agreement in advance to submit international legal disputes to an impartial tribunal and not merely good faith in exercising a reserve veto power is the cornerstone on which an effective international judicial system in which both large and small nations have confidence must rest.

Such a system extending at first throughout the free world, ultimately it is to be hoped beyond the Iron Curtain, is no longer just a dream of utopians, but is one of the essential practical steps which national survival requires us to take in substituting international law for international anarchy.

Withdrawal of the self-judging reservation in the United States acceptance of the International Court's optional jurisdiction would dramatize in a way no halfway measures possibly could, this country's leadership and sincerity of purpose in encouraging judicial settlement of international disputes and supporting and extending the authority of international law.

The CHAIRMAN. Thank you very much.

COURT SITTING IN "CHAMBERS"

Mr. STEVENSON. Do I have 1 or 2 minutes, sir, because there were one or two points that came up earlier I would like to address myself to?

The CHAIRMAN. Well, we have a great many witnesses. Doesn't your prepared statement cover these points?

Mr. STEVENSON. I am afraid not.

The CHAIRMAN. All right, you may have 2 minutes.

Mr. STEVENSON. Well, one point was that one of the earlier witnesses mentioned that there was a great risk of chambers of the Court being used rather than the whole Court.

I would like to put on the record the fact that that could only be with the consent of the parties, and that the parties would have the opportunity to have national judges. This would only be done to expedite the proceedings.

MEANING OF DOMESTIC JURISDICTION

I would also like to say with respect to this question of domestic jurisdiction, the quotation of the State Department statement seems to me to have been overdone. Domestic jurisdiction in essence means that the matter is not governed by international law.

This is something quite different from saying that there may be some relationship between foreign and domestic matters.

To establish that a matter is not within domestic jurisdiction, you have to show either that it is governed by a treaty or that the States have been willing to concede that customary international law has grown to the point where there is a legal obligation to act in a particular way with respect to a certain matter.

That is something quite different than a vague relationship between foreign and domestic affairs.

I will stop right there, Senator.

LEGAL POSITION OF THE UNITED STATES

The CHAIRMAN. Senator Aiken, do you have any questions?

Senator AIKEN. I have no questions.

I was interested in Mr. Stevenson's observation about being too much on the defensive in this matter. Widespread opposition to submitting disputes to the International Court might indicate widespread fear that the International Court would always decide against the United States, and also if you want to go a step further, you might infer that there is a widespread belief that the United States is wrong, would be wrong, in too many of these disputes.

I would not want to accept either the thesis that the Court would always decide against the United States, or that the United States is wrong in many of the cases.

Mr. STEVENSON. I think that is an excellent point, Senator. I think our record is very good and our legal position is very strong.

Senator AIKEN. Yes.

Mr. STEVENSON. So we are the ones who are primarily being hurt.

Senator AIKEN. I have the feeling that no country in the world could stand up better in the Court with its dealings with other nations than we would.

QUESTION OF VALIDITY OF SELF-JUDGING RESERVATION

The CHAIRMAN. Do you agree, Mr. Stevenson, that with this reservation it could be said that we really are not members of the Court, that this is a nullification of it?

Mr. STEVENSON. I think we should distinguish between being members of the Court and having accepted the compulsory jurisdiction of the Court.

I think we would clearly still be members of the Court in the same sense that members of the Soviet bloc are who have not accepted the compulsory jurisdiction, but that would mean that you would have to have a specific agreement to bring each particular dispute before the Court.

Also, I am not 100 percent in agreement with those who say that our present reservation is necessarily invalid. I think the more important point is that some of the most distinguished judges think it is, and it reflects the basic antagonism between it and the spirit of the Statute, and the spirit of compulsory jurisdiction with respect to defined legal matters.

The CHAIRMAN. Well, I was speaking broadly, not technically nor legally, as to whether this reservation goes so far toward nullifying the compulsory nature of the Court that, as Senator Humphrey said, it is almost hypocritical. On the one hand, we say that we accept jurisdiction, and on the other hand, we withdraw assent.

Mr. STEVENSON. I do not think you have to go that far to oppose the reservation, Senator. I think that it leaves us open to that argument.

But certainly if we do not exercise it, and these judges are not right, we might still have cases in which we were willing to be brought before the Court. But I do not think that is the complete answer to it. I think it is more reflective of the spirit with which we have accepted it.

The CHAIRMAN. Well, thank you very much, Mr. Stevenson, and we have your full statement.

Mr. STEVENSON. Yes, sir.

(The prepared statement of Mr. Stevenson follows:)

STATEMENT OF JOHN R. STEVENSON, CHAIRMAN OF THE COMMITTEE ON INTERNATIONAL LAW, THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

Mr. Chairman and members of the Committee on Foreign Relations of the U.S. Senate. I am chairman of the Committee on International Law of the Association of the Bar of the City of New York and am appearing on behalf of the association in support of Senate Resolution 94. I am submitting herewith, with the request that it be made part of the record of these hearings, the resolution adopted by the stated meeting of the association on December 8, 1950, urging withdrawal by the United States of the "self-judging" amendment to the domestic jurisdiction reservation to acceptance of the compulsory jurisdiction of the International Court of Justice. A similar resolution and a supporting report were approved at the stated meeting of the association on January 20, 1948.

"SELF-JUDGING" AMENDMENT

In 1946 the United States accepted the optional compulsory jurisdiction of the International Court of Justice—a jurisdiction limited to legal disputes involving treaties, international law, factfinding in connection with alleged breaches of international obligations, and reparation of such breaches. However, excluded from this acceptance by specific reservation were all "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America." The last eight words—added by amendment on the floor of the Senate to the domestic jurisdiction reservation as reported by the Committee on Foreign Relations—are frequently referred to as the "self-judging" reservation. Their effect is to reserve to the United States the absolute right to make a unilateral determination that a matter is within its domestic jurisdiction and thus completely bar consideration of the matter by the International Court of Justice. Thus the United States reserved to itself a complete veto power whether or not it would exercise it, in any case brought against it in the International Court.

DOMESTIC JURISDICTION RESERVATION

The resolution adopted by our association and Senate Resolution 94 are in no respect directed against the domestic jurisdiction reservation as such. They accept the principle that the International Court of Justice should not concern itself with matters which are essentially within the domestic jurisdiction of individual countries, and contemplate the exclusion by the Court's own action of such disputes. This is in complete harmony with article 2 of the United Nations Charter which provides that "Nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require members to submit such matters to settlement under the charter."

SELF-JUDGING ASPECT

The association's resolution and Senate Resolution 94 are concerned solely with the self-judging amendment to the domestic jurisdiction reservation. This amendment, giving to the U.S. Government rather than to the International Court the power to decide whether a particular matter is within the domestic jurisdiction limitation on the Court's jurisdiction, is particularly exceptionable to lawyers since it violates the fundamental principle that no party shall be a judge in its own case. Or to put it in terms of contract law, it is an illusory acceptance of the Court's jurisdiction, since it leaves to one of the parties the right to determine the extent and the very existence of its obligation.

INCONSISTENCY WITH COURT'S STATUTE

Five permanent judges of the International Court, including the distinguished judges of England, Australia, Norway, and Uruguay and the first President of

the Court, the late Judge Guerrero of El Salvador, have taken the position that the self-judging reservation violates the provision in the Court's governing statute (art. 30) that "In the event of a dispute as to whether the Court has jurisdiction the matter should be settled by the Court." The grounds of asserted invalidity have been particularly well summarized by Judge Lauterpacht of England in his dissenting opinion in the *Interhandel* case (judgment of March 21, 1959) in which the Court (having decided the case on other grounds) concluded that it was not necessary to consider the United States objection to its jurisdiction based on the self-judging reservation. Judge Lauterpacht there stated:

"The Court is the guardian of its statute. It is not within its power to abandon, in deference to a reservation made by a party, a function which by virtue of an express provision of the statute is an essential safeguard of its compulsory jurisdiction. This is so in particular in view of the fact that the principle enshrined in article 30(6) of the statute is declaratory of one of the most firmly established principles of international arbitral and judicial practice. That principle is that, in the matter of its jurisdiction, an international tribunal, and not the interested party, has the power of decision whether the dispute before it is covered by the instrument creating its jurisdiction."

Judge Lauterpacht and Judge Spender of Australia have gone further and concluded that not merely is the self-judging reservation itself invalid, but also the entire acceptance of the Court's compulsory jurisdiction in which it is contained. The International Court itself, as such, has not yet decided whether a self-judging reservation and an acceptance containing such a reservation are void.

While the case against the self-judging reservation does not rest on whether or not it will ultimately be held to be valid or invalid under the Court's statute, the discussion of the reservation by the distinguished judges of the International Court serves to point up that at the very least it is inconsistent with the spirit of the statute and the purposes underlying the United States acceptance of the Court's compulsory jurisdiction.

VINDICATION OF AMERICAN RIGHTS

To the practicing lawyer and the American businessman with foreign investments, probably the most detrimental aspect of the self-judging reservation as it relates to the one's international practice and to the other's overseas properties is that it seriously hampers the possibility of vindicating the rights of U.S. nationals injured by other nations violating international law. Both the Court's statute and the decisions of the Court interpreting the statute limit the Court's optional compulsory jurisdiction to the minimum terms of the acceptance of this compulsory jurisdiction by the adverse parties. Since the Court's jurisdiction is thus limited to this lowest common denominator of the respective countries' reservations, any nation against which the United States brings suit has the reciprocal right to defeat the Court's jurisdiction by asserting that the case involves its domestic jurisdiction. Thus, foreign countries, despite their acceptance of the Court's compulsory jurisdiction can refuse to submit to the Court the question of the validity of their taking of U.S. citizens' property and the adequacy of any compensation paid or proffered. The United States, which has a larger stake in foreign investment than any other country, and the citizens it is protecting, are effectively deprived of their day in court.

CHANGING MEANING OF DOMESTIC JURISDICTION

I believe that one of the principal questions concerning the proponents of the self-judging reservation is that in the future the International Court might adjudicate matters which are today clearly within our domestic jurisdiction—our immigration policies, for example. This is a legitimate question but not an adequate reason for the retention of the self-judging reservation.

The matters regulated by international law—and thus not within a country's domestic jurisdiction as that term is generally understood—are, of course, changing in response to the changing needs of a world in which Paris is only 7 hours from New York by jet and Moscow a few minutes from Detroit by ballistic missile. However, it is important to consider the ways by which such change is accomplished. In the first place, there are matters which the United States and one or more other countries have decided should be regulated by a treaty.

If we are unwilling to submit the solution of any differences arising under such treaty to determination by an impartial international tribunal, it would be far better not to enter into the treaty in the first place than to later invoke our discretionary power to say that a matter which we had already so conceded to be of international concern was essentially within our domestic jurisdiction. The use of the self-judging reservation in such circumstances would be so manifestly an abuse of our discretion that I am sure no responsible U.S. Government would invoke it. Accordingly, insofar as matters are subjected to international law by treaties which we voluntarily enter into, no protective purpose is served by the self-judging reservation.

The principal expansions in the scope of international law have taken place in the treaty area for customary international law, like customary law generally has been of very slow growth, depending in large measure on the acceptance or at least acquiescence in a new principle, understood as a matter of obligation and not just of general usage. The most effective means of preventing the establishment of new principles of customary international law regulating to our disadvantage matters presently within our domestic jurisdiction is to be vigilant for attempts to establish them and vocal in our opposition to those who espouse them either in theory or in justification of their own conduct. The risk of the establishment through custom of new international legal principles which we, and other like-minded states, have actively opposed, and I would doubt that there will be many instances when we are completely alone in our opposition, is very slight indeed. Moreover, it is a risk which I submit might be increased rather than decreased by the self-judging reservation. For instead of actively concerning ourselves with the growth of substantive international law inimical to our interests we might be all too prone to retire behind the Maginot Line provided by the self-judging reservation.

MAINTENANCE OF ESTABLISHED PRINCIPLES

More important, we have a significant stake in the maintenance of a number of principles of international law which, although generally recognized by the civilized nations of the world and conscientiously observed in the past, have been flouted with impunity since World War II. I refer to principles such as that of adequate, prompt, and effective compensation in the event of the taking of a foreign national's property. The sooner we can bring before the International Court of Justice those who are violating established principles of international law the sooner we can arrest that undermining of their vigor which long-continued practice might eventually produce. Yet the self-judging reservation, through reciprocity will, in effect, permit even those other countries which have accepted the Court's compulsory jurisdiction to prevent us from reasserting through judicial proceedings the vitality of established principles.

BAD EXAMPLE

The United States self-judging reservation marked the first time that such a unilateral power had been included by any country in its acceptance of the compulsory jurisdiction of the International Court of Justice or of its predecessor the Permanent Court of International Justice. However, it has served as a precedent for 7 other nations of the 39 accepting the Court's compulsory jurisdiction to include similar reservations, 2 of which—those of France and India—have subsequently been withdrawn. It has probably also discouraged other nations from conferring compulsory jurisdiction on the International Court, and fuller use of the Court by those who have. It has certainly made it difficult for the United States to encourage other nations to accept the compulsory jurisdiction of the Court and the principle of judicial settlement of international disputes. It has also made it much easier for the Soviet bloc to justify its abstention. The resulting overall weakening of the International Court's role in the settlement of international disputes—which has been far less than hoped for when the U.N. Charter, and annexed statute of the Court, was signed in San Francisco in June 1945—is contrary to the United States interest in extending the scope of the rule of law among nations and developing an accepted means of settlement of international disputes of a legal character.

Any exercise by the United States of its self-judging power will constitute an unfortunate precedent in yet another respect. It has been the announced policy of the U.S. Government to support collective action by the political bodies

of the United Nations and in the processes by which such action is taken. In this connection the United States has frequently condemned the unilateral action of the Soviet Union in exercising its veto power in the Security Council. However, to the extent we exercise our own veto power in respect of the Court's jurisdiction we will be hard put to condemn the Soviet Union for its use of the veto power in the political field.

With respect to matters coming before the Court, moreover, we must presumably exercise our discretionary power, if at all, before consideration of the merits of the case by the Court. Since we would probably be most likely to exercise it in those extreme cases where the Court, itself, would find the matter not within its jurisdiction even in the absence of an exercise of our self-judging power, we shall be needlessly undermining our moral position.

LEADERSHIP IN JUDICIAL SETTLEMENT

As a result of the self-judging reservation, U.S. support of the authority of international law and the principle of judicial settlement of international legal disputes has been viewed by many as somewhat equivocal and wavering. This has been so even though there were no reasonable grounds for concluding that we would exercise this power arbitrarily or other than in good faith. The reason is the conviction, which I share, that agreement in advance to submit international legal disputes to an impartial tribunal, and not merely good faith in exercising a reserved veto power, is the cornerstone on which an effective international judicial system, in which both large and small nations have confidence, must rest. Such a system, extending at first throughout the free world and ultimately it is to be hoped beyond the iron curtain as well, is no longer a dream of utopians, but one of the essential practical steps, which national survival requires us to take, in substituting international law for international anarchy.

Withdrawal of the self-judging reservation in the U.S. acceptance of the International Court's optional compulsory jurisdiction would dramatize—in a way no halfway measures possibly could—this country's leadership and sincerity of purpose in encouraging judicial settlement of international legal disputes and supporting and extending the authority of international law.

Resolution Adopted by the Association of the Bar of the City of New York, on December 8, 1959

Whereas the amicable settlement of international disputes and the achievement of the rule of law in international affairs can be materially assisted by the improvement of international judicial machinery;

Whereas the record of the International Court of Justice and the weight of informed critical commentary such as the report published in August 1959 of the section of international and comparative law of the American Bar Association are persuasive that the self-judging aspect of the United States' domestic jurisdiction reservation in its declaration of adherence to the jurisdiction of the International Court of Justice has impaired the effectiveness of the International Court of Justice: Now, therefore, be it

Resolved, That the Association of the Bar of the City of New York urges the Government of the United States to withdraw the self-judging aspect of its domestic jurisdiction reservation to its declaration of adherence under article 36 of the statute of the International Court of Justice at the first favorable opportunity.

The CHAIRMAN. The next witness is Mr. Ervin W. Potter, member of the Board of World Peace of the Methodist Church.

STATEMENT OF ERVIN W. POTTER, BOARD OF WORLD PEACE, METHODIST CHURCH

Mr. POTTER. With the committee's permission, I will ask that my statement be made of record, and then I will summarize it so far as I can to save time.

The CHAIRMAN. We will be pleased very much, sir.

I am sure you have heard some of the other witnesses, and insofar as possible, I hope that you will not repeat their testimony, and concentrate upon the new thoughts you have in regard to it.

Mr. POTTER. Thank you, Mr. Chairman.

My name is Ervin Potter, an attorney at law, and I practice law in the city of Salem, Oreg.

I am a member of the Board of World Peace of the Methodist Church, and also a member of the executive committee of that board.

I might point out just in a footnote way that I am also much interested in the bar association activity in world peace through law.

I feel I should make our identity known. Our board is the national board. It was created by our church in 1924, and the purpose of it is set forth in my statement so I will not read that.

I might point out, though, just for the sake of those listening, that we do have in our church a social concern section and, consequently, our board moves in the direction of endeavoring to create the will to peace, the conditions for peace, and the organization for peace, and I might point out why we are here.

Our board has a representative from every section of the country, and it is supplemented by a hundred annual conferences and then approximately 16,000 local church commissions. Our church presently has about 9 million members.

Our board is, of course, charged with the work of peace.

We do not, as any democratic organization, of course, we cannot, speak for each of our 9 million members.

But I might say that we are the body that is charged with this work and we do, we feel, represent the majority of the church, and I might say on this particular point probably the overwhelmingly majority.

RESOLUTION PASSED BY BOARD OF WORLD PEACE

In the meeting of our board, on November 23, 1959, we considered matters of greatest interest to the church, which we felt were of greatest interest and concern of the church and, at that time, we passed this following resolution, and I will read it here verbatim if I may:

Believing that world law must increasingly bring peace and justice to mankind, and that the International Court of Justice deserves great strength and stature, we call for the removal of the Connally reservation of 1946, by which the United States reserved the right to decide for itself in each case whether a matter was domestic or within the jurisdiction of the court.

We feel that Senate Resolution 94 most certainly matches that call.

U.S. RESPONSIBILITY FOR SHAPING THE FUTURE

We believe, too, that some of these considerations that were taken into account by us in reaching that decision, we felt, and I personally feel, are that the United States has the responsibility, as Mr. Stevenson put it, for shaping the future.

I do not think it is right for us to try to counter what others are doing. I feel we have in the United States democracy the kind of a life that should sell itself, if we will make our own actions show, demonstrate to the world what we have here, and we feel we should take a forward look toward things.

I might mention that there was a mention in this statement about the Department of International Cooperation and Development that may sound visionary, but I will say this: I think our country has a duty to begin to look forward and see how the United States can best put its efforts into the foreign field and still preserve our sovereignty.

I think thereby we increase our own stature and our own well-being.

RECIPROCAL NATURE OF RESERVATION

We have gone into this matter of reciprocity, and I might just point out to the committee one thought that, I think, is pertinent there, the reason for that reciprocity. It is not just a matter of being a rule of the Court entirely, because this section of the Statute, section 38 of the Statute, says that the jurisdiction of the Court is compulsory "in relation to any other State accepting the same obligation."

So you see that, I think, is very pertinent in coming into the understanding of this reciprocity matter.

I think that clearly it does mean that the other States can apply this against us, and that is one of the reasons. Perhaps the others that have been stated are adequate—I mean also correct.

U.S. FAILURE TO SUPPORT INTERNATIONAL OBJECTIVES

But further, now, I say have we lost stature by failing to support international objectives that we have previously had, the League of Nations?

I am not criticizing anybody particularly, not on this one; I think that in the United States we have all had a part in our legislation and, consequently, we, of course, cannot say that the Senate did not ratify it. The United States did not ratify the League of Nations, and it is now a dead thing.

Now, the Permanent Court of International Justice waned because we said that we would accept it but we would have to have some things figured out, first.

We held out for a veto in the United Nations. Maybe we should have—I do not criticize that—but you can see what it does to the Security Council's power. It cannot stop any emergency with that kind of a situation. We have one, and so does Russia.

I might say now that we have a similar situation in this particular thing that is before us now, the International Court of Justice, and insofar as the possibility that our conditional acceptance consequently might result in a nullification, I think I would go that far. I think it probably does. I feel that for this reason:

Our conditional acceptance is repugnant to various provisions of the Statute of the Court itself and, consequently, if we have the power to withdraw it, why cannot they use this reciprocity clause with the result that we have nothing when we get into court?

I feel we must not miss this chance now to show the world that we are ready to undertake responsibility.

We have been talking about faith. I do not think this is entirely a matter of faith. We must certainly have in our makeup the willingness to apply sovereignty where it belongs. International matters require international tribunals.

Our sovereignty in our United States, I would not give it up for anything, but I do not say we should exercise sovereignty over other states of the world. We must not let this Court die.

I think, then, I would skip this matter of the domestic issue. I have set forth six things here that could be said to be helpful in the event of an arbitrary decision by the Court. They have all been brought before the committee in other statements, and I am not going to take the time of the committee to reiterate them.

PROGRAM OF WORLD PEACE THROUGH LAW

I do want to bring forth one quotation, however, that I feel is very important, and that is a statement that was made by—that is to say he is now chairman of the World Peace Through Law Committee, Charles S. Rhyne, of the American Bar Association Committee on World Peace Through Law, and he says, and I think this is vital, and I hope comes before you to say this; he told me that he might:

We cannot go much further with this program until this self-judging phrase is repealed.

Now, that is something in itself that I feel is important at this time.

I might point out to you, and I probably do not need to, the weight that this bar program is carrying forward throughout the world. This is not just a thing that is in the mind of someone. This is active.

The local bar associations, my State is studying Thailand, for example, and Portugal. We are studying their legal systems.

Our members are going to go over there, and look at their legal systems. This is not just a thought; this is a thing that is in action.

Mr. Rhyne says that by harnessing the law, like harnessing a great river that flows silently, this rule of law can be raised as a new standard of decency in international relations.

But it cannot be done until this reservation is removed. I am speaking now of the self-judging reservation that appeared in our declaration of consent.

Just to summarize, our board, I personally, urge that this action be taken, that the Senate Resolution No. 94 be given early attention, and that it permit the possible cooperation and understanding on the part of lawyers throughout the world to combat affirmatively this cold war.

The CHAIRMAN. Thank you very much, Mr. Potter.

Do you wish to ask any questions?

Senator AIKEN. No.

The CHAIRMAN. Thank you very much for a very fine statement.

Mr. POTTER. We very much appreciate the opportunity to come before you and give you our position.

(The prepared statement of Mr. Potter follows:)

STATEMENT ON BEHALF OF THE BOARD OF WORLD PEACE OF THE METHODIST CHURCH BY MR. ERVIN W. POTTER, ATTORNEY AT LAW, SALEM, OREG., MEMBER BOARD OF WORLD PEACE, METHODIST CHURCH, AND THE EXECUTIVE COMMITTEE OF THAT BOARD

Mr. Chairman and honorable members of the committee, my name is Ervin W. Potter, an attorney at law from Salem, Oreg. I am a member of the national Board of World Peace of the Methodist Church, and a member of the executive

committee of that board.¹ I speak on behalf of the board and I would like to express the appreciation of the board for this opportunity to present to you its position on Senate Resolution 94.

I. IDENTITY OF THE NATIONAL BOARD OF WORLD PEACE

The Board of World Peace was created by the Methodist Church in 1924 and its disciplinary purpose is "to advance the interests of the Kingdom of our Lord through international justice and the spirit of good will throughout the world; to endeavor to create the will to peace, the conditions for peace, and the organization for peace; and to organize effective action in the church for the advancement of peace."² It is supplemented by 100 annual conference boards and approximately 16,000 local church commissions.

II. POSITION OF THE BOARD CONCERNING SENATE RESOLUTION 94

At the recent meeting of the national Board of World Peace of the Methodist Church the board unanimously favored passage of legislation which would eliminate the so-called Connally reservation from the declaration of the United States accepting the International Court of Justice. The resolution of the board reads as follows: "Believing that world law must increasingly bring peace and justice to mankind and that the International Court of Justice deserves greater strength and stature, we call for the removal of the Connally reservation of 1946, by which the United States reserved the right to decide for itself in each case whether a matter was domestic or within the jurisdiction of the Court."³

III. SOME BASIC CONSIDERATIONS FOR THE POSITION

A. *The international situation calls for a forward look.* Our board recognizes your committee is faced with decisions of great importance and international ramifications in this resolution, and I do not attempt to say our board has solutions to them all. But we do feel Resolution 94 should be given favorable recommendation for it seems to result in an affirmative manner to withdraw the self-determination phrase added to our acceptance resolution.

I feel the time has come for the United States as a whole to look forward as a way out of the seeming deadlock of the cold war. To the average observer we seem to be kept busy countering moves of other countries rather than affirmatively moving toward a constructive plan for world improvement and development. We have administrative departments to cover nearly all phases of our domestic life; why should we not have a department such as a Department of International Cooperation and Development to study and recommend affirmative ways our country should move to promote the welfare of all peoples of the world, and likewise our own, in long range planning for economic development and peace?

B. *Have we lost international stature by withholding support?* The United States has repeatedly withheld support from plans designed for international cooperation; We refused to join the League of Nations—it died. We insisted on a veto power in the Security Council of the United Nations—the effective power of the Council to stop an emergency can be vetoed. We failed to support the Permanent Court of International Justice under the League of Nations—thereafter it waned. The United Nations created the International Court of Justice. We have accepted, but with reservations that might well be interpreted as possible nullification of the entire declaration of acceptance. This Court has decided approximately 17 contentious cases since its creation in 1946. Will it die? I submit the United States may in each of these instances have missed opportunities to lead the world affirmatively in creating the conditions for peace. We must not miss again.

C. *The statute of the Court excludes domestic disputes.* The American Bar Association recently completed an analysis of the statute of the Court and in its report pointed out only international legal disputes can be contemplated by the Court. Political and sociological matters are thus excluded, and the United

¹ Mr. Potter is also chairman of Marion County Bar Association world peace through law committee and member of the Oregon Bar Association committee for world peace through world law.

² "Methodist Discipline," sec. 1536.

³ Minutes of the board, 740 Rush Street, Chicago, Ill., contact Dec. 15, 1959.

Nations Charter prohibits intervention in matters which are essentially within the domestic jurisdiction of any state (art. 2(7)). The risk of an arbitrary decision is small compared with the great benefit the United States could receive in creating a legal forum for our international disputes and in the increase in stature before the eyes of the world. The 6-month withdrawal provision in Resolution 94 protects us from any continuing abuse by the Court and since the Security Council enforces the judgments of the Court there seems some semblance of a review there.

D. Reciprocity results in keeping us out of court. Even a country whose declaration of acceptance is without limitation or reservation can invoke our limitation under the doctrine of reciprocal consent as applied by the Court, for the statute in section 38 provides compulsory jurisdiction "in relation to any other state accepting the same obligation." Thus the United States is hampered by its own limitation in bringing lawful claims in the Court.

E. Our limited confidence has been a precedent.

F. World peace through law cannot proceed. Our board of world peace is on record as commending the American Bar Association for its farsighted program world peace through law and regards the idea as having tremendous promise and an affirmative way to worldwide personal cooperation that may well lead to world peace. We feel all churches and churchmen should support the program. The American Bar Association is activating all State and local bar associations to implement the program and is sweeping lawyers who might have been once doubtful into enthusiastic supporters of the real possibility of real, lasting peace by harnessing the law "to realize its full potential in benefits to mankind."⁶

The American Bar Association has recommended the repeal of the Connally reservation. (See 71 ABA Rep. 91, 316.) Mr. Charles Rhyne, former president of the American Bar Association and now chairman of the world peace through law committee of that association recently reported at the conclusion of five regional bar conferences that "the rule of law can justifiably be raised as a new standard of decency in international relations," but he has also said that the Connally reservation "must be repealed before we can go much further with any program for world peace through law."⁷

IV. Conclusion

We respectfully urge your favorable early action on Senate Resolution 94 as an effective withdrawal of the self-judging amendment to our declaration of acceptance of the International Court of Justice.

The CHAIRMAN. The next witness is Prof. Quincy Wright, Woodrow Wilson Department of Foreign Affairs, University of Virginia.

Mr. Wright, we are very glad to have you, sir.

STATEMENT OF QUINCY WRIGHT, PROFESSOR OF INTERNATIONAL LAW, UNIVERSITY OF VIRGINIA

Mr. WRIGHT. I speak as a professor of international law, and I have been teaching international law since 1916 at Harvard University, the University of Minnesota, the University of Chicago, and now at the University of Virginia.

I have also taught in several foreign countries: in Geneva, Switzerland, in Turkey, in India, and in China.

I have had a good deal of experience in international law, and I want to say in the beginning that I think there has been an inadequate appreciation of the decision of international law.

DECISIONS OF THE COURT

I would like to present two propositions which, it seems to me, might well be considered.

⁶ Charles S. Rhyne, "World Peace Through Law: The President's Address." *American Bar Journal*, October 1958, vol. 44, p. 997.

⁷ Charles S. Rhyne, *American Bar Journal*, June 1949, pp. 587 and 588.

One of them is that since its establishment in 1920, the decisions of the World Court have commended themselves to the members of the community of nations as, generally, have the decisions of the Supreme Court of the United States commended themselves to the States of this Union.

The CHAIRMAN. Well, that is not saying very much, is it?

Mr. WRIGHT. Nevertheless, we think we could not get along without our Supreme Court.

The CHAIRMAN. I guess that is right.

INTERNATIONAL LAW COMPARED TO U.S. CONSTITUTIONAL LAW

Mr. WRIGHT. The other proposition I want to make is that international law is as stable and precise a body of doctrine as is the constitutional law of the United States.

I think I can say that with some confidence.

I recall that my colleague at the University of Chicago pointed out in his book entitled "The Roosevelt Court" that the Supreme Court had upset 39 precedents which were thought to be established in American constitutional law.

The International Court of Justice has certainly not been subject to the charge that it has made new law as extensively as has the Supreme Court of the United States.

The CHAIRMAN. You think it has much more respect for the principle of stare decisis than does our Court?

Mr. WRIGHT. I think that is true, although the International Court of Justice is not bound by the principle of stare decisis.

The CHAIRMAN. But it accepts it?

Mr. WRIGHT. It has followed the practice.

The CHAIRMAN. It practices it.

REASONS FOR SUPPORTING SENATE RESOLUTION 94

Mr. WRIGHT. Now, there are three points I want to address myself to as reasons why I support this Resolution No. 94. First, it is in the interest of the United States to strengthen the rule of law in international relations; second, acceptance of the compulsory jurisdiction of the Court by the United States without reservation would contribute much to this objective; and third, such acceptance would not impair any important interest of the United States.

NEED FOR ESTABLISHING RULE OF LAW

Now, in regard to the first, it has long been recognized that while dictatorships can live by force democracies have to live by law. This is even more true in international than in domestic relations. The functioning of democracy implies the achievement of consensus among large numbers of people in the formulation of policies, and this requires time. Without a rule of law maintaining stability, preventing subversion or violence, and giving assurance against sudden, unpredictable change initiated by minorities or even by majorities, sufficient time is certain to be lacking.

In international relations the ineptness of the democracies, faced by the rapid maneuvers of Hitler and the other members of the axis,

led to a situation in which the democracies 10 times more powerful than the axis in 1934 were struggling for their lives in 1940. Similarly, the overwhelming relative power of the democracies after World War II has in a decade deteriorated to a situation in which the Communist dictatorships control a larger population, command equality or even superiority in weapons and technical education, enjoy a superior reputation for devotion to peace among many of the nonaligned peoples of the world, and manifest greater assurance of the political and economic capability of their system. Other illustrations could be found in history.

Democracy has many advantages. It respects human liberty, and, if peace can be assured by virtue of the protection of geographical barriers or the rule of law, it can advance in prosperity, social welfare, and the arts more rapidly than other forms of society. But in a jungle world in which every state is subject to immediate attack from anywhere in the world, and security depends on adequate deterrent or striking power, democracy is under grave disadvantages. Where such situations have arisen in smaller areas in the past, democracies have not survived. The Athenian democracy succumbed to Philip of Macedon in spite of the oratory of Demosthenes; the Roman Republic to Caesar and Augustus in spite of Brutus and Cassius; and today many of the newly formed democracies in Asia and Africa are submitting to military dictatorships to provide greater security from aggression.

That eminent statesman Elihu Root, Secretary of War, Secretary of State, and member of the Senate, agreed with Alexis DeTocqueville that democracies were inferior to autocrats in the conduct of foreign affairs, but he said:

The prevalence of democracy throughout the world makes inevitable a change in the conduct of foreign affairs. Such affairs when conducted by democratic governments must necessarily be marked by the absence of those undertakings and designs, and those measures combined with secrecy, prosecuted with perseverance, for which DeTocqueville declares democracies to be unfit.

Instead, he said, if democracies are to survive, they must combine to build a regime of law. This may sound utopian, but it is less so today than it was when Root made this comment in 1917, or when President Wilson said to the same effect at about the same time: "The world must be made safe for democracy." Today we have the United Nations, and the International Court of Justice, as institutional foundations on which to build, as well as the centuries-old tradition of applying international law in diplomacy and arbitration, imperfect as that application has often been. American Presidents have expressed allegiance to international law since the time of Washington, and the Continental Congress expressed that allegiance even earlier in numerous resolutions. Now that geography no longer provides a shield behind which our democracy and others can develop, the establishment of the rule of law in international relations is more necessary than ever before.

This has been recognized recently by President Eisenhower, Vice President Nixon, Attorney General Rogers, a committee of the American Bar Association, and numerous private organizations, such as the American Society of International Law, and the Commission To Study the Organization of Peace, and other organizations.

Now, I come to my second question—

The CHAIRMAN. Mr. Wright, how long is your statement?

Mr. WRIGHT. How long have I been going?

The CHAIRMAN. We will put the whole statement in the record.

Mr. WRIGHT. I think the main question I would like to emphasize is that we need to have a rule of law, that the removal of the Connally reservation will not in itself be sufficient. Many other things have to be done, but it will be a necessary preliminary step, as so many of the other witnesses you have had have said. We cannot take the lead in establishing a rule of law until we do away with this reservation.

EFFECT OF RESERVATION ON OUR DECLARATION OF ACCEPTANCE

It seems to me the charge that the United States is hypocritical and lacking in sincerity is well taken.

What we virtually do by this reservation is to say that we accept the jurisdiction of the Court in legal disputes except those in which at the moment we do not want to accept it.

I agree with Judge Lauterpacht that our reservation is as broad as the acceptance and, therefore, there is no acceptance at all.

HAVING CONFIDENCE IN THE INTERNATIONAL COURT

In regard to the suggestion—and this is my third point—that the United States would probably be deprived of the right or the opportunity to defend a vital interest if it accepted adjudication, the issue is how much confidence do we have in the Court and in the law.

A study of the way in which the judges of the Court are selected, and the way in which the Court has functioned in the cases before it, ought, in my opinion, to inspire confidence.

I cannot go into that, but it seems to me, as I suggested in my comparison of this Court with the Supreme Court of the United States, that there is every reason to have confidence in this Court and in the law which it applies.

COURT'S ATTITUDE TOWARD QUESTION OF JURISDICTION

Now, I want to make a point in regard to domestic jurisdiction.

I suggest that domestic jurisdiction—a state has domestic jurisdiction in every dispute whatever, except those in which it has accepted an obligation by treaty or in which it is bound by an obligation under general international law, and I want to point out that the International Court of Justice has leaned over backward on the question of jurisdiction.

Let me just give an illustration in the case of the *Lotus*, which is a case where Turkey was claiming jurisdiction over a French officer who was accused of having been negligent and, as a result, had collided with a Turkish vessel on the high seas, with the resulting loss of lives of several Turkish seamen.

Now, France claimed that Turkey had no jurisdiction over this matter. The International Court of Justice said that jurisdiction depends on sovereignty; that it belongs to the state that contests the jurisdiction of a state, to show a positive rule of international law that imposes an obligation upon the state in the circumstances.

It found that France was unable to show that Turkey was bound by any obligation of international law and that, therefore, the matter lay within the domestic jurisdiction of Turkey.

The CHAIRMAN. Where did it occur, within her territorial waters?

Mr. WRIGHT. No, sir; on the high seas.

The CHAIRMAN. On the high seas.

Mr. WRIGHT. The reason for this, I think, is obvious. As has been suggested by other witnesses, the International Court of Justice has no sheriff or marshal to enforce its decisions. It depends upon the good faith of the litigants to carry out its decisions.

It is quite aware that unless the litigants are convinced that they have consented to the jurisdiction of the Court, they are not likely to carry out the awards. That is the reason why, in practically every case, the issue of jurisdiction comes up first, and the Court always requires that there be clear evidence that the parties have consented to the jurisdiction, because the jurisdiction of the International Court always depends on consent, and that means that it must be shown that the defendant is under obligations of international law or treaty.

RESERVATION CONCERNING MULTILATERAL TREATIES

Just one other point. I would like to go further than Senator Humphrey's resolution. I would like to eliminate the provision concerning multilateral treaties.

I think we have to realize that that also is a provision giving the United States self-judgment.

This provides that in any multilateral treaty which may come before the Court, the Court does not have jurisdiction unless the parties to the treaty affected by the decision are parties to the case before the Court. That will not be usual because a multilateral treaty may have 50 or 60 parties, and it is not likely that all of them will be before the Court as litigants.

If that is not the case, then the Court lacks jurisdiction unless the United States specially agrees to the jurisdiction.

It seems to me that that ought to be eliminated; the Court ought to be the agency for interpreting multilateral treaties, and certainly the United States ought not to reserve self-judgment on that matter.

ELIMINATION OF WORDS "HEREAFTER ARISING"

I also agree with Professor Briggs in saying that the two words "hereafter arising" ought to be eliminated in the first line of the second page of this resolution.

That would, it seems to me, unfortunately reduce the legal disputes which could come before the Court, and would raise a difficult question of just when the dispute arose. Thank you.

The CHAIRMAN. Thank you very much, sir, Dr. Wright. That is a very helpful statement to the committee. I appreciate your taking the trouble to come here and give us the benefit of your wide knowledge on the subject.

(The prepared statement of Dr. Wright follows:)

STATEMENT BY QUINCY WRIGHT, UNIVERSITY OF VIRGINIA

Should the United States accept the compulsory jurisdiction of the International Court of Justice without the reservations concerning domestic jurisdiction and multilateral treaties included in the declaration of August 1946? I think it should because I think (1) it is in the interest of the United States to strengthen the rule of law in international relations, (2) acceptance of the

compulsory jurisdiction of the Court by the United States without reservation would contribute much to this objective, and (3) such acceptance would not impair any important interest of the United States. (4) The appropriate procedure to accomplish this result would be for the United States to make a new declaration accepting the optional clause without reservations except in regard to agreements for submitting a dispute to another tribunal. Let us consider these four points.

I. It has long been recognized that while dictatorships can live by force democracies have to live by law. This is even more true in international than in domestic relations. The functioning of democracy implies the achievement of consensus among large numbers of people in the formulation of policies, and this requires time. Without a rule of law maintaining stability, preventing subversion or violence, and giving assurance against sudden, unpredictable change initiated by minorities or even by majorities, sufficient time is certain to be lacking.

In international relations the ineptness of the democracies, faced by the rapid maneuvers of Hitler and the other members of the Axis, led to a situation in which the democracies 10 times more powerful than the Axis in 1934 were struggling for their lives in 1940. Similarly the overwhelming relative power of the democracies after World War II has in a decade deteriorated to a situation in which the Communist dictatorships control a larger population, command equality or even superiority in weapons and technical education, enjoy a superior reputation for devotion to peace among many of the nonaligned peoples of the world, and manifest greater assurance of the political and economic capability of their system. Other illustrations could be found in history.

Democracy has many advantages. It respects human liberty, and, if peace can be assured by virtue of the protection of geographical barriers or the rule of law, it can advance in prosperity, social welfare, and the arts more rapidly than other forms of society. But in a jungle world in which every state is subject to immediate attack from anywhere in the world, and security depends on adequate deterrent or striking power, democracy is under grave disadvantages. Where such situations have arisen in smaller areas in the past, democracies have not survived. The Athenian democracy succumbed to Philip of Macedon in spite of the oratory of Demosthenes, the Roman Republic to Caesar and Augustus in spite of Brutus and Cassius, and today many of the newly formed democracies in Asia and Africa are submitting to military dictatorships to provide greater security from aggression.

That eminent statesman Elihu Root, Secretary of War, Secretary of State, and Member of the Senate, agreed with Alexis de Tocqueville that democracies were inferior to autocrats in the conduct of foreign affairs, but he said: "The prevalence of democracy throughout the world makes inevitable a change in the conduct of foreign affairs. Such affairs when conducted by democratic governments must necessarily be marked by the absence of those undertakings and designs, and those measures combined with secrecy, prosecuted with perseverance, for which De Tocqueville declares democracies to be unfit." Instead, he said, if democracies are to survive they must combine to build a regime of law. This may sound utopian, but it is less so today than it was when Root made this comment in 1917, or when President Wilson said to the same effect at about the same time: "The world must be made safe for democracy." Today we have the United Nations, and the International Court of Justice as institutional foundations on which to build, as well as the centuries-old tradition of applying international law in diplomacy and arbitration, imperfect as that application has often been. American Presidents have expressed allegiance to international law since the time of Washington, and the Continental Congress expressed that allegiance even earlier in numerous resolutions. Now that geography no longer provides a shield behind which our democracy and others can develop, the establishment of the rule of law in international relations is more necessary than ever before.

This has been recognized recently by President Eisenhower, Vice President Nixon, Attorney General Rogers, a committee of the American Bar Association, and numerous private organizations, such as the American Society of International Law, and the Commission To Study the Organization of Peace.

II. There seems to be a wide consensus that the United States has a major national interest in strengthening the rule of law in international relations, but will unreserved acceptance of the compulsory jurisdiction of the International Court of Justice contribute to that end? The officials and organizations to which

I have referred believe it will. The committee of the American Bar Association on world peace through law in its meeting of August 24, 1959, achieved "a consensus that the unilateral determination clause of this [Connally] reservation should be eliminated. As one of the greatest users of the rule of law nationally, the United States must prove that we trust the rule of law internationally. Such leadership on our part is essential." The American Society of International Law at its annual meeting on May 2, 1959, recorded "the sense of the meeting that the members warmly associated themselves with the recommendations of the committee [on study of legal problems of the United Nations] that the United States withdraw its reservations to the acceptance of the optional clause of the statute of the International Court of Justice."

The Institute of International Law, which has functioned for nearly a century among the leading international jurists of the world, at its meeting at Neuchâtel, Switzerland, in September 1959, expressing its conviction that "the maintenance of justice by submission to law through acceptance of recourse to international courts and arbitral tribunals is an essential complement to the renunciation of recourse to force in international relations," and "considering that more general acceptance of compulsory jurisdiction would be an important contribution to respect for law," resolved that "it is of the highest importance that engagements to accept the jurisdiction of the International Court of Justice undertaken by states should be effective in character and should not be illusory," and "it is highly desirable that states, having excluded from their acceptance of the compulsory jurisdiction of the International Court of Justice in virtue of article 36, paragraph 2, of the statute of the Court, matters which are essentially within their domestic jurisdiction as determined by their own government, or having made similar reservations, should withdraw such reservations, having regard to the judgments given and opinions expressed in the *Norwegian Loans*, and *Interhandel* cases and to the risk to which they expose themselves that other states may evoke such reservations against them."

It is to be noted that in the cases referred to, five judges of the Court held that a reservation of the kind made by the United States was contrary to the explicit provision of the Court statute, giving the Court itself competence to decide on disputes concerning its jurisdiction. Two of these judges (Lauterpacht, British; Spender, Australian) held that a state that had made such a reservation was not a party to the optional clause at all, and three (Klaestad, Norwegian; Armand Ugón, Uruguayan; Guerrero, Salvadorean) held that while such a reservation was null and void, the state that had made it was bound by other portions of its declaration. A final decision on this point was not necessary because in both cases the Court held it lacked jurisdiction on other grounds.

The Connally reservation is vicious, not only because it is contrary to the statute and makes acceptance of compulsory jurisdiction wholly or largely illusory, and thus opens the United States to the charge of insincerity and hypocrisy, but also because it has been followed by other countries and has thus tended to destroy the compulsory jurisdiction of the Court. Of 39 states that have made declarations under the optional clause 6 have made this reservation. The point should be emphasized that its reciprocal application means that this reservation not only prevents a state which has made it from being sued, but also prevents that state from suing other states, even though they have accepted compulsory jurisdiction without reservation.

I do not suggest that universal acceptance of the compulsory jurisdiction of the Court by the United States will establish the rule of law in international relations. Many other things are necessary to that end, including a reduction of international tensions, and depolarization of power in the world making possible a stabilization of the power equilibrium; strengthening of the United Nations so that collective security can function and political disputes can more easily be settled by negotiation and conciliation; development of international law itself so that it will command greater confidence, especially among the states of non-Western civilization, which have in the past contributed little to its development; and the elaboration of the international judicial system by regional courts of easy access. The task of creating an effective rule of law in the world will require the collaboration of statesmen, jurists, international organizations, and leaders of opinion over a long period of time, but in this task the United States should be in a position to assume leadership. It cannot do that until it has manifested its own confidence in international law and the International Court of Justice by accepting compulsory jurisdiction without reservations.

The essence of the rule of law is, on one hand, a body of rules and principles which are clear and easily accessible, reflect justice when applied, and sanctioned by the express or tacit consent of governments, and on the other hand, courts composed of judges learned in the law and generally believed to be impartial, and with jurisdiction over all disputes in which a legal claim is advanced. In many disputes one or both parties make demands on political, economic, social, or other nonlegal grounds. Such disputes cannot be settled by courts applying law. But the competence of courts to settle legal aspects of such controversies will usually contribute to the settlement of nonlegal claims by negotiation, mediation, or conciliation. Until legal rights are established, it is difficult for diplomacy to function.

III. It has been suggested, however, that the United States may be unable to protect its vital interests if it subjects itself to international adjudication. The issue is: How much confidence do we have in the Court and the law? A study of the way in which the judges of the Court are selected and the way in which the Court has functioned in the cases before it ought, in my opinion, to inspire confidence.

The reservations, in its present declaration, give the United States the right to deprive the Court of jurisdiction by asserting that an issue is within the domestic jurisdiction of the United States. Furthermore, if the interpretation or application of a multilateral treaty to which the United States is a party is at issue in a dispute between any states parties to that treaty, the United States may deprive the Court of jurisdiction by refusing its consent to the jurisdiction, unless all parties to the treaty, which may be affected by the decision are parties to the case. I present this interpretation with hesitation because this reservation is extremely ambiguous and it seems doubtful whether the Court would, in fact, tolerate a claim of the United States to veto its competence to interpret a multilateral treaty in a dispute between other states. It must be observed that, apart from any reservations, the Court is obliged by international law not to give judgment on any matter within the domestic jurisdiction of a litigant that is on a matter on which the litigant's discretion is not limited by any obligation of international law or treaty. The statute of the Court, however, explicitly gives the Court itself the authority to decide whether the matter is actually within the domestic jurisdiction of the litigant making such claim (art. 36, par. 6). I do not believe there is any real risk in accepting this competence which the Court has exercised satisfactorily in cases before it and which the United States in fact accepted in principle when it ratified the United Nations Charter with the attached statute of the Court. It is also worth observing that the Charter provides that "legal disputes should as a general rule be referred by the parties" to the Court in accordance with the statute (art. 36, par. 3), and that the statute implies that reservations to declarations accepting compulsory jurisdiction should be confined to condition of reciprocity or the duration of acceptance (art. 36, par. 3). This implication, however, has been frequently ignored in practice.

As to the reservation concerning multilateral treaties, it must be recalled that a decision of the Court binds only the parties before it and in that particular dispute (art. 59). Such a decision is *res adjudicata*, but not *stare decisis*. For practical and psychological reasons, however, a judgment of the Court undoubtedly has influence as a precedent and is recognized in the statute as a "subsidiary" source of law (art. 38, par. 1d). The statute permits any party to a multilateral treaty under consideration to intervene in the litigation (art. 63) but if it does not do so, it is not bound by the decision and is free to present its own view of the meaning of the treaty in a subsequent case. In any case, the claim to veto the Court's jurisdiction in a case between two other states concerning the meaning of a general treaty can only be described as unreasonable. Litigants before the Court should be free, without interference by other states, to utilize in their arguments all sources of international law described in the statute of the Court—treaties, custom, general principles of law, and, as subsidiary sources, the opinions of jurists and judges (art. 38, par. 1). Furthermore, multilateral treaties are becoming increasingly important as international law is codified by such instruments illustrated by the recent agreements on the regime of the high seas. The Court is the natural agency to interpret them, and its jurisdiction to do so should not be hampered.

IV. It is believed that rather than amending the present declaration, the United States should withdraw it and present a new declaration without crippling reservations. This has been the usual practice when states have wished to modify reservations as they have in many instances. France, for example, made

a new declaration eliminating its reservation like the Connally reservation after this reservation had been used against it in the latter's suit against Norway on a matter involving the gold clause in Norwegian bonds sold in France. This procedure would avoid difficulties as to when a new declaration goes into force, and would give dramatic evidence that the United States intended to assert a new leadership in developing the world rule of law.

While it is believed that the second and third reservations in the present American declaration should be entirely eliminated in a new declaration, the first reservation, permitting utilization of other tribunals competent to deal with a case by virtue of an agreement, is not objectionable. Such a reservation is usual and it may sometimes be convenient to utilize a tribunal established by regional or bilateral agreement.

The CHAIRMAN. George Montgomery, Jr., of the American Coalition of Patriotic Societies.

Mr. Montgomery, we welcome you to the committee. Do you have a summary of your statement?

STATEMENT OF GEORGE S. MONTGOMERY, JR., THE AMERICAN COALITION OF PATRIOTIC SOCIETIES

Mr. MONTGOMERY. I have filed a statement, Mr. Chairman.

Mr. CHAIRMAN. You have filed a statement?

Mr. MONTGOMERY. A statement has been filed, I think, as required by your group.

My name is George S. Montgomery, Jr., of New York City, an attorney.

As stated, I have filed a statement on behalf of the American Coalition of Patriotic Societies.

This is an organization of 117 different units with membership throughout the country.

Since filing this statement I have been requested by Gen. Bonner Fellers, who is the executive director of For America, to add to my statement the expression of this organization of its opposition to the Humphrey resolution.

For America, incidentally, is a quaint old-fashioned one, devoted to the ideals inherent in its title, "For America." It has been particularly active in the past session of Congress through the formation of a citizens' foreign aid committee. This committee, you may be aware, Mr. Chairman, has been influential in obtaining a reduction from the over \$4 billion requested for foreign aid by over \$1 billion. I hope that that represents a good achievement, in your opinion.

These gentlemen in For America and in the citizens' foreign aid committee are devoted to the solvency of the United States.

They are also devoted to the sovereignty of the United States, and they believe that the proposal of Senator Humphrey basically involves the sovereignty of the United States.

OBLITERATION OF DEMARCATION BETWEEN INTERNATIONAL AND DOMESTIC MATTERS

The Humphrey resolution may be regarded in one or two lights. Separated from each other as alpha from omega, as Dan from Beer-sheba, starting with alpha, this proposal is introduced by many well-wishing internationalists who are marching behind an emblem of world peace through world law, an estimable objective.

In their opinion, as expressed, they believe that the elimination of the Connally reservation is limited in its effects to a field purely international.

They believe, and some of them, I think, sincerely, that this field still represents a demarcation, reliable and detectable, between international matters and domestic matters.

To them this proposal is no more important than the proposal to form the Court of Permanent Arbitration in 1907.

The charter members of the Alpha Society, as I call it, of course, are the White House, the Attorney General, and, I gather, the Secretary of State, and, of course, Senator Humphrey, because they are still making double poster beds—

The CHAIRMAN. I do not think you should leave out the Vice President. He has also expressed himself in favor of this.

Mr. MONTGOMERY. Mr. Chairman, it is now 4 o'clock on January 26. If you know where the Vice President of the United States stands on that issue I would like to be informed.

Now whether he has come in the front door or the side door or the back door of the Alpha Fraternity House, I do not know. If you can tell me I would be completely obliged.

If I may go to the other end of the spectrum and group myself with the Omega Society, this society has had few members until the recent decade.

I will say that the members of the Omega Society can stand just as firmly for the objective of world peace through means of achieving it honorably and effectively as the internationalists.

I will say that in the minds of the Society of Omega this is not exclusively an international question.

We believe that the line of demarcation, as revealed in the history of the past dozen years, has been virtually completely obliterated, certainly from the point of view of placing American affairs at the mercies of a world court of 15 members, only 1 of whom can be an American, 2 of whom are already from Iron Curtain countries, the Soviet Union and Poland, and the most recent appointment is from the Republic of Panama, and, if you think we will get unbiased treatment when the subject of the Panama Canal comes up, you are more optimistic than I am.

The fact is, however, that the membership of the Court can include any number of Iron Curtain countries. There is no limit.

The makeup of the World Court consists of only a small minority of so-called common law countries.

Jurists, and there is no assurance that they will be jurists, from other countries anywhere in the world may be of any caliber, approved by the respective appointers.

Now in view of this fear that the line of demarcation has been obliterated, Mr. Chairman, these citizens are terrified.

I would say that events of the past 12 years should be studied by your committee and by the Senate very carefully before you arrive at a decision on the Humphrey resolution.

You will find nothing about the history of the 12 years in any report submitted to you by the American Bar Association unless a new one has been made since last week.

SPEECHES MADE BY VICE PRESIDENT NIXON

The CHAIRMAN. Mr. Montgomery, for the record, Vice President Nixon in an address on April 13 of last year at the Academy of Political Science—I will not read it all—refers to the fact that the President indicated in his state of the Union message reexamining our position with regard to the Court. The Vice President said:

To remedy this situation the administration will shortly submit to the Congress recommendations for modifying this reservation. It is our hope that by our taking the initiative in this way other countries may be persuaded to accept and agree to a wider jurisdiction of the International Court.

I think the reasonable interpretation of his statement would be that he supports this resolution.

Mr. MONTGOMERY. I would agree with you, Mr. Chairman, had it not been for events that followed upon that statement which included, among other things, a letter from Charles Rhyne, former president of the bar association, to Frank Holman, also a former president of the American Bar Association, in which Mr. Holman was informed that the Vice President did not say anything like that in that speech. Incidentally—

The CHAIRMAN. Go ahead. You may proceed with your own statement. We will not argue about that. That is his public statement as supplied to the committee. I was not there, I might say. I cannot personally say that he said that or testify that he said that.

Mr. MONTGOMERY. Well, we are on the subject, I would like to make this statement.

Frank Holman has prepared and has mailed from Seattle a statement on this subject which should have reached you today.

I want to say on his behalf that if it has not reached you, I urge you if it comes in late, to admit it into the record because, in my opinion, it represents one of the most complete refutations of the glib assurances you will receive from some of the members of the American Bar Association to the effect that the American Bar Association stands fully behind the Humphrey resolution.

I think that that statement unqualifiably is distorted and misleading, and I think that Frank Holman's statement will be one of the most important in your record.

On the question of the Vice President, sir, I would like to quote to you—

The CHAIRMAN. I do not wish to make an issue of it. I was just quoting that. As I say, I am not prepared to assert on my own knowledge that he made it. I only quoted that from the statement.

Mr. MONTGOMERY. I was in hopes you could clear up some doubt we had on the subject. Of course, I think Vice Presidents are more important now than in the days of Mr. Wintergreen, but to the extent that he is important, let me follow by a quotation from a speech of the Vice President on October 5 in Chicago:

If we rule out—
said the Vice President—

as we have and should the use of force or threats of force as a means of settling differences where negotiations will reach an impasse the sole alternative is the establishment of the rule of law in international affairs.

There are some who suggest that the only answer is that nations should agree to submit all their disagreements to some new, all-powerful world tribunal.

This is the Vice President of the United States.

However well intentioned such proposals may be, they are completely unrealistic in the present world context. As the distinguished Washington correspondent of the New York Times, Mr. Arthur Krock said to me recently, "Great powers will submit details to arbitration but never their basic interests."

If you can tell me in 5 minutes after 4 where the Vice President stands, I am still listening.

The CHAIRMAN. As I say, I do not expect to undertake that assignment either this time or in the near future. The Vice President can speak for himself.

Mr. MONTGOMERY. I hope he will.

CRITICISM OF PRESENT ADMINISTRATION

Mr. Chairman, returning to the philosophy of the Omega Society, when the White House and Attorney General and State Department recommend a vital step in international affairs, such as enhancing the powers of this World Court, I think that the citizens, certainly the Senators, should take a look at the record from which this recommendation comes.

I might say, if you will agree with me, that I am entitled to feel that this is a vital issue, and that there is no reason why I should hold any punches in my comments on the present administration.

I regard the fact that the Caribbean Sea has been turned into a Communist lake, that Russian submarines have been permitted to surface to assist the Communist-directed revolution in Cuba, as indicative, without innumerable other instances, of failure and surrender throughout the world under this administration, as indicating no confidence in any recommendations emanating from the White House, the Attorney General or the Secretary of State.

The CHAIRMAN. Well, that is a very strong statement, Mr. Montgomery.

ADOPTION OF CONNALLY AMENDMENT

Mr. MONTGOMERY. I intended it be strong. I want to go back to the formation of the Omega Society. It occurred in 1946. It was formed on the floor of the U.S. Senate. It was formed by a Senator named Tom Connally who, with 50 of his colleagues, with only 12 in opposition, recommended the insertion of six words in the submission of the United States to the jurisdiction of the World Court. And when I look back I see the peaceful conditions which faced the Senate at that time, when there was no hint that one of the chief architects of the United Nations charter and the Statute of the International Court of Justice, was working not for the United States—treason is such a nasty word—and when, as in later years, it has appeared that the phraseology that appeared in this Charter and in the Statute as to the protection of domestic sovereignty from any impingement time after time was shown to be false and illusory, at that time. And the reports that you will get from the American Bar Association are accurate, the House of Delegates of the American Bar Association in 1947 recommended the repeal of the Connally reservation. That was about 13 years ago, and certain members of that great organization, the American Bar Association, which was once great—it will be great

again in spite of its present leadership—you will be told that that is still the opinion of the American Bar Association.

I repeat again, please read Frank Holman's statement before you close your mind to that.

DISAPPEARANCE OF DISTINCTION BETWEEN DOMESTIC AND FOREIGN AFFAIRS

One more point, Mr. Chairman, which stems from the year 1950, and I hope that every witness who comes here in opposition to the Humphrey resolution will repeat this in his statement.

I have in my hands a pamphlet that is called "Our Foreign Policy." It is issued by the Department of State and was issued in 1950, and it has a foreword by the then President of the United States, whom you will remember—

The CHAIRMAN. Mr. Montgomery, I just put that in the record a moment ago. It is all right to refer to it. What did you wish to say about it? We do not want to put it in again. I put that statement in.

Mr. MONTGOMERY. The first sentence of this pamphlet from the Department of State reads:

There is no longer any real distinction between "domestic" and "foreign" affairs.

My purpose of putting that again in the record, Mr. Chairman, is this: an effort is being made to dismiss those words as irrelevant and as not meaning what they appear to be.

We are not deciding whether you or I or the Senate or the United States believe that those words are meaningful or not. We are deciding what these words will mean to 50 members of the World Court, and I ask you whether there will be any better evidence before that Court of the disappearance of a distinction between domestic and foreign affairs than the statement of the State Department which, until it was challenged this morning, has gone unattracted for 10 years.

Now, I believe that the events of the last decade are such as to give meaning to that term.

I believe that the State Department meant that, and I believe that the World Court justices will believe that, and in order to—one last illustration.

Let me point out two incidents in the careers of two 20th century Presidents.

Take the first 10 years of the century, there was a civilian naturalized citizen in the hands of criminal elements abroad.

Theodore Roosevelt sent that famous message:

"We want Perdicaris alive or Raizuli dead."

The President at that time was ready to move every weapon of the Army, Navy, and the Marine Corps to protect one single civilian citizen.

Come to the situation 50 years later, and observe the current occurrences in the fifties. American civilians and American soldiers have been molested, murdered by criminal elements abroad. With what consequences?

In some instances not even polite notes of protest. In others an appeal to the United Nations Organization for help.

In one instance, a shameful one, when an American boy was killed over in Japan by Soviet planes, we sued for money damages and, of course, the Soviets, with a tissue of lies, had our petition thrown out, and nothing more has been done about it.

Now, I ask, Mr. Chairman, if the fate of the American soldier has ceased to be a matter of domestic concern to the United States, then what in the world remains within our domestic jurisdiction?

You have seen in front of the White House mothers of missing boys in Korea inquiring for their welfare and whereabouts of their sons, turned away from the White House and directed to go to the United Nations for information and advice.

It may not be irrelevant to recall the brutal treatment that these American mothers received at the gates of the United Nations.

Now, I repeat: what assurance can we have then if these matters become international that immigration, tariffs, certainly the Panama Canal, tell me what assurance can the American citizen have that this World Court will not have a field day with any matter that affects the American citizen no matter how we believe ourselves—and there is no appeal and this Court does not have to write opinions, and it is not ruled by a constitution, and it contains now enemies of this country, potentially hostile in every way.

I regard this proposal, Mr. Chairman, as the greatest example of suicidal folly that has ever been brought up in Washington and I beg you not to let the American people into this trap.

The CHAIRMAN. Thank you very much, Mr. Montgomery.

[Applause.]

I would caution the audience that you are guests here and that this is not a show, and I will request you not to display your approval or disapproval. We did not come here for entertainment. This is a serious hearing.

(The prepared statement of Mr. Montgomery follows:)

STATEMENT OF GEORGE S. MONTGOMERY, JR., ON BEHALF OF THE AMERICAN COALITION OF PATRIOTIC SOCIETIES, WASHINGTON, D.C.

My name is George S. Montgomery, Jr., an attorney admitted to the bar of the State of New York in 1924. I have been practicing law in New York City since admission to the bar, and am a member of the New York County Lawyers Association, the New York State Bar Association, and the American Bar Association. I am submitting this statement at the request of the American Coalition of Patriotic Societies. The American Coalition is a patriotic organization composed of 117 cooperating societies. It was founded in 1929 by a committee headed by the late John B. Trevor of New York City. Mr. Milton M. Lory of Sioux City, Iowa, is the present president. Membership in the cooperating societies of the coalition extends to every State in the Union.

While I am submitting this statement on behalf of the coalition, the particular material presented is of my own preparation and has not been reviewed by the executive committee of the coalition. For one reason, the extraordinarily brief notice afforded by the chairman of the committee as to the time of the hearings and the completely inadequate period for the hearings would prevent any satisfactory review prior to submission.

In this connection, I should like to urge the committee to refrain from closing off the opportunity for other American citizens and organizations to appear and express their views. The matter of eliminating the Connally reservation is one of such major significance, so vital to the American Nation, as to warrant an extension of hearings so long as any interested and informed citizen wishes to be heard.

I have one instance particularly in mind, in the case of a former president of the American Bar Association, Frank E. Holman, whose schedule does not

permit him to reach Washington on January 27, but who has prepared a statement of issues with a historical background reaching to 1945 which I believe will be regarded as a basic document for the U.S. Senate, particularly in its disclosure of the events that led Mr. Holman to reverse his approval of the elimination of the Connally reservation in 1947 to a firm support of the reservation today. I believe that without Mr. Holman's statement, any accurate appraisal of the position of the American Bar Association today is impossible and I trust that not only will Mr. Holman's statement be received but that he be given an opportunity to appear before this committee sometime during the month of February.

The statement that I am submitting, while dealing generally with the subject of the Connally reservation, is also aimed particularly at presenting material which I think is essential for all Senators to have before them before giving final judgment on certain reports emanating from the American Bar Association.

STATEMENT CONCERNING THE WORLD COURT AND THE CONNALLY RESERVATION
IN CONNECTION WITH SENATE RESOLUTION 94

During the year 1960 much will be heard of the famous six words of Senator Tom Connally. Just six words—"as determined by the United States"—but they made a world of difference when in 1946 the Senate accepted them and in recognizing the jurisdiction of the newly created United Nations World Court expressly excluded from its power "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States as determined by the United States." Now, 15 years later, incalculably powerful forces are determined to undo and cast aside the handiwork of Senator Connally, and thus to vest in this World Court the power to determine finally, above all possibility of appeal, the extent of its own jurisdiction over any matters brought before it from any source involving American interests.

The potential consequences of this step for the American citizen, in my opinion, dwarf the significance of any action ever taken by the American Nation in world affairs, not even excluding our entry into the United Nations.

Every citizen, in any event, should be vitally concerned in properly weighing the pros and cons of the proposal to repeal the Connally reservation. He must recognize that if a majority of a quorum of the 15 individuals composing the World Court, or in certain instances, if 2 out of a panel of 3 of such individuals decide to assume jurisdiction, there is no power on earth to compel a reversal or even a review, however specious or silent may be the reasoning of the judges, and even if every one of 179 million American citizens find the judgment unwarranted and abhorrent.

In order to grasp the full import of the elimination of the Connally reservation, the alert citizen should seek the answers to two preliminary questions, first, who will be the judges and second, what will they judge?

THE WORLD COURT JUDGES

All of the members of the United Nations are ipso facto parties to the statute creating the Court and the representatives of each are eligible for membership on the Court. The election of judges is made by an absolute majority of the Security Council and the General Assembly of the United Nations. Judges hold office for 9 years and may be reelected. Only one judge may be elected from any member country. The United States now has one member. The Iron Curtain countries now have two members, those from the U.S.S.R. and from Poland. There is no limit to the number of judges which may come from the Iron Curtain countries other than the number of judges on the Court and the number of Iron Curtain countries. If Red Communist China is admitted to the United Nations, its representation on the World Court would almost certainly follow expeditiously. For those exponents of membership who volubly insist that 600 million Chinese cannot be ignored by the United Nations, would be equally voluble for representation on the World Court for a people representing 25 percent of the world's population. A somewhat different logic would be advanced on behalf of, say, Ghana. So far as the influence of the United States is concerned, the recent ignominious failure to obtain a seat for its friend Turkey as opposed to Poland on the Security Council is not reassuring.

The present membership of the Court is as follows: Norway, Pakistan, France, United States of America, Poland, United Arab Republic, Uruguay, U.S.S.R., United Kingdom, Argentina, Mexico, Nationalist China, Greece, Australia, and Panama.

While it is futile to try to forecast the formation of the World Court country by country in the future, it may not be idle speculation to suggest to the inquiring citizen that he judge the possibilities and probabilities of the Court including at all times individuals possessing the following qualifications:

A. A type of judge devoted to the highest principles of jurisprudence, incorruptible, above all improper influence of any nature. His decisions will always be those of a jurist not a legislator.

B. A type of judge, well intentioned and conscientious as a man, but capable of being influenced, by the consequences of any decision, into entering the field of legislation if he feels strict adherence to the law will have unfortunate results.

C. A type of judge who is not his own master; bound to follow in some or all fields, outside forces to whom he is in some manner beholden.

It should be difficult to convince the American citizen who has recently observed all of these three types of judges on certain American courts, that these same types will not also be found in the World Court. As to the proportion of each type to be expected, who could possibly speak with assurance?

Howevcr, I hope no one will try to pretend that at the present time there are not at least two grade C Judges on the Court. Whatever may be the personal qualifications of representatives of the Iron Curtain countries, it is conceivable that they could decide against the vital interests and advantages of the Kremlin in any issue of importance. Surely we cannot expect these Judges to defect to the free world, which would be the only safe way in which they could protect themselves from reprisals were they to attempt independence. I believe that the words of the late Secretary of State, John Foster Dulles, in one of the last public addresses before his death present a real warning to Americans interested in this inquiry. Speaking before the New York State Bar Association on January 31, 1959, Mr. Dulles drew a sharp line between the ideals of the American Nation striving for a rule of law in the world and the Iron Curtain countries exemplifying the rule of force. Ironically this same speech was referred to me by a State Department representative as evidencing the late Secretary's approval of the elimination of the Connally reservation. As a matter of fact, Mr. Dulles' description of the sort of international court to which America might adhere was so divergent from the present World Court as to demonstrate that he could not possibly have favored enlarging the power of this Court, at least without significant revamping.

WHAT IS TO BE JUDGED

The repeal of the Connally reservation will throw into the hands of the World Court Justices the question as to what matters are essentially within the domestic jurisdiction of the United States, and outside their own, and what matters are essentially foreign or international in nature and proper subjects for their adjudication. However well defined this distinction between domestic and foreign affairs may be in the mind of the citizen, he must not forget that his own judgment is quite irrelevant and ineffective should the World Court Judges entertain a contrary view. And it will be a matter of grave peril to the citizen if he fails to appreciate that the World Court Judges will be interpreting the terms "domestic" and "foreign" in the light of conditions of 1960 and beyond. The significance of submission of American affairs to a World Court under current conditions must not be approached as if this were 1907, 1920, or even 1946. Certain developments have come to light in the last decade which in the opinion of some of the recognized authorities in the American Bar have effectively removed the issue of expanding the World Court's powers from the exclusively international field and have rendered the issue one of involving a revolutionary reformation of our entire constitutional system and a surrender of sovereignty. Space does not permit an adequate exploration of these developments but I wish to highlight what would appear to be the most significant and decisive.

THE STATE DEPARTMENT DECLARATION OF 1950

In the spring of 1951, one of the most distinguished members of the American Bar Association was paying a visit to the State Department in Washington. During this visit he encountered a pamphlet which had apparently been published by the State Department for wide distribution. The opening sentence of this publication engaged his attention: "There is no longer any real distinction between 'domestic' and 'foreign' affairs." This astounding pronouncement can

be found in Department of State Publication 3972—General Foreign Policy Series 28, September 1950.

Alfred J. Schweppe is probably the first member of the association to encounter and observe the significance of the State Department declaration of September 1950. Its effect on Mr. Schweppe and such other prominent members as Frank Holman, president of the association in 1948, has been made known to members of the bar. In the case of these two members their judgment of the Connally reservation, which had been expressed in the years 1947 and 1948, was completely revised and reversed. Perhaps it would be more accurate to state that Mr. Schweppe and Mr. Holman, as a result of the State Department declaration and similar occurrences, became aware of the concealed plan harbored by certain internationalists and thus realized that the issues presented to the house of delegates prior to 1950, had been distorted and misrepresented.

Now in 1960 let the inquiring citizen read the State Department pronouncement and satisfy himself as to whether it will not be taken literally by the 15 judges on the World Court whether they be grade A, grade B, or grade C. Certainly the authority of the American State Department could not be surpassed as determinative of what matters are domestic and foreign in the judgment of the World Court.

With a view to arriving at the actual significance of these words, I communicated with the State Department in the spring of 1959 with the following result. The Department declined to deny that a literal construction should be put upon these words but in an obvious attempt to straddle this question referred me to testimony given by the late Secretary of State, John Foster Dulles, before a Senate committee on April 6, 1953. On that date the subcommittee of the Senate Judiciary Committee was conducting hearings on the so-called Bricker amendment. A short while prior to these hearings and also prior to the time that Mr. Dulles became Secretary of State, he had publicly declared that the treaty-making power was "an extraordinary power, liable to abuse. Treaties make international law, and also they make domestic law." He had also stated that the treaty-making power could cut through the Constitution. During his long examination by the Senators, Mr. Dulles shocked his oldest friends by an attempted reversal of his earlier emphatic statements. It was quite obvious that he was acting under rigid instructions from the White House to defeat the Bricker amendment at any costs, even that of self-respect. For any representative of the State Department to refer to this occasion, constituting one of the unfortunate blights on the career of a devoted American, is incomprehensible. It merely confirms the fact that whatever the meaning of the words published in 1950, no official retraction has ever been made on behalf of the State Department. Furthermore, the internationalists, whose influence became so pronounced in the State Department from 1933 on and still continues, could not bring themselves to retract their words of victory of September 1950.

Should the citizen feel that this official statement of 1950 is so extreme as to require something less than a literal construction, let him consider some changes in the domestic scene which have occurred since the opening of the 20th century. Let us consider the conduct of two 20th century Presidents of the United States.

During the first decade of the century an American naturalized citizen, a civilian, was in danger of harm at the hands of criminals abroad. The then President, Theodore Roosevelt, dispatched the now famous message, "We want Perdicaris alive or Raizuli dead." The fate of this citizen was a matter of such domestic concern as to warrant the dispatch to his aid of every available element of the Armed Forces of the Nation.

During the 1950's criminal elements abroad on occasions too frequent to enumerate insulted, molested, seized, incarcerated, and brutally murdered American citizens, both civilian and military. What have been the consequences of such violations of the rights of Americans and the laws of humanity? We know that on one occasion when an unarmed American plane with American boys mustered into service under the Stars and Stripes was wantonly shot down by the planes of these criminal elements, our administration resorted to the manly refuge of instituting suit for damages. The sordid result of this action, which was effectively countered by affidavits of the criminals containing a tissue of lies, is painful to recite. It is even more painful to recall that on another occasion the representative of an international organization, teeming with enemies and spies and born in treason, was engaged for the purpose of pleading for the lives of American boys held in criminal captivity. Even more debasing was the spectacle of American mothers of boys missing in the Korean war being brusquely

turned from the White House because the proper place for inquiry as to their sons was the United Nations. It may not be irrelevant to mention the incredible brutality which these mothers encountered at the gates of this infamous organization.

If the fate of American citizens and soldiers is no longer a matter of domestic concern for the American Nation, and must be left to the tender mercies of an international court or an international parliament, who can describe with any assurance what possible matter remains essentially within the domestic jurisdiction of the United States? In the light of the history of the current decade, who can possibly challenge the complete accuracy of the State Department pronouncement that "There is no longer any real distinction between 'domestic' and 'foreign' affairs"?

An American President who behaved in the first decade of this century in the manner of the current Chief Executive would certainly have been impeached out of hand. What would happen if a President Theodore Roosevelt were in the White House today? Of two things we can be sure: first, that there would be a radical change in the character of certain international guests recently imposed upon the American people, and second, that a Vice President of the United States would not be spit upon with immunity no matter what spot on the globe he chose to visit.

The present Vice President, leading contender for the Presidency this year, has recently revealed the tremendous change in the climate in which the issue of "domestic" and "foreign" must be determined. On October 5, 1959, in a speech at the opening of the new law buildings of the University of Chicago, after referring repeatedly, in a friendly conversational manner to the one man above all others responsible for the unbelievably humiliating experience which he and his family suffered in a neighboring Republic, this Vice President stated: "I know that so-called patriotism and competitive spirit became somewhat out of fashion in recent years as a result of too much emphasis on these normally admirable virtues in times past."

In these few words can be detected the far-reaching ambition of the internationalist forces which are sufficiently powerful to place in the mouths of our American leaders such words of denunciation of qualities and traits heretofore cherished by the American people. This ambition spells the doom of patriotism and nationalism. It spells the submergence of the identity of the American Nation and of a once great American people into the international sea where individuality and distinction will cease to be even echoes of the past.

"There is no longer any real distinction between 'domestic' and 'foreign' affairs," says the State Department. And the history of the present decade will certainly confirm this statement for the benefit of the World Court judges. And the State Department has never retracted this pronouncement. Any attempt now to avoid the impact of these words, whether it be through interpretation, retraction, or repudiation, obviously will come too late to influence the World Court. If the internationalists prevail upon the State Department to take action toward this end during the debate on the Connally reservation, it will be so obviously a ruse to hoodwink American Senators as to stultify the State Department and leave the World Court judges (and the world) unimpressed.

THE REPORT OF THE SECTION OF INTERNATIONAL AND COMPARATIVE LAW, AUGUST 1959

In August 1959, the report on the "Self-Judging Aspect of the United States Domestic Jurisdiction Reservation With Respect to the International Court of Justice," prepared by a special committee of the section, was submitted to and approved by both the council of the section and by the section itself. I received a copy of this report in November. Upon reading through the report I arrived at some astounding conclusions which I will outline here.

I. HISTORICAL DEFECTS IN THE REPORT

The special committee had been directed by the section's council "to study thoroughly the Connally reservation to the U.S. declaration accepting the compulsory jurisdiction of the International Court of Justice, its effect in practice, and the pros and cons as to whether or not an attempt should be made to have it withdrawn."

Pursuant to these instructions, the special committee prepared and submits in its report an account of events leading up to the formation of the United Nations

International Court of Justice and to the U.S. declaration accepting the compulsory jurisdiction of this Court. This material is carefully prepared and constitutes a valuable contribution to this field of history.

The principles involved in the determination of the meaning "within the domestic jurisdiction" are properly presented. The special committee is careful to point out that this meaning is subject to change. Such changes may be effected by action of any state. A state may "cut down the range of matters within its domestic jurisdiction" by treaty action. Again, "a state may consent to the creation of a new rule of customary international law, and thus assume additional obligation under international law, by acquiescence—that is, by failing to protest against the assertion by other states that that rule exists."

The special committee having thus revealed the power of a state to broaden the international field and cut down the domestic field by action which may even be that of negative acquiescence, it would be supposed that the momentous declaration of the State Department of the United States in 1950, representing positive action in this field, would be of vital interest.

And yet nowhere in the report can be found the slightest reference to this action.

The reader is not favored with any comments on the extraordinary development of the international ideology which, since 1948, as described above, has beset the United States to the great satisfaction of the one-worlders and to the horror of the old-fashioned "isolationists."

Let me repeat that what significance, if any, the special committee may have attributed to this 1950 declaration or what any of the 179 million Americans may personally think of it, is not the important point. The importance of this declaration rests in the probable reaction of the 15 individuals sitting on the World Court and determining the extent of their jurisdiction over American affairs. The concealment of this pronouncement of the State Department and similar occurrences of the present decade from the readers of the section report savors of historical chicanery.

II. OTHER CONSEQUENCES OF THE ZEAL OF THE INTERNATIONALISTS

In its anxiety to eliminate the Connally reservation and to propel the United States into the unrestricted powers of this World Court, the special committee has, in several instances, violated the high standards of conduct applicable to members of the American Bar Association.

1. *The self-serving term "self-judging"*

The bias of the special committee is evident in the very first word of the title of its report. The use of the term "self-judging" represents cheap semantics at its worst. It is demonstrably an unwarranted distortion of facts. The United States was under no obligation to submit any controversies to the World Court. When it chose to submit some controversies but not others it was entirely proper to define, in any manner it chose, the extent of such submission. The declaration that it would not submit any controversies judged by it to be within the domestic jurisdiction of the United States was an honest, forthright statement. Subsequent events have demonstrated to many thoughtful Americans, whatever their sentiments may have been at the time, that the reservation was prophetically wise. The judgment of the United States that a controversy lies within its own domestic jurisdiction cannot be regarded as a judgment in its own favor in a case actually being litigated, which is the implication the special committee wishes to convey.

2. *Immigration, tariffs, and the Panama Canal*

Being aware of the concern of American Senators and other citizens with the danger of foreign supervision of these three matters, the special committee seeks to allay such fears. Its efforts to this end are amusing since it is torn between the necessity of temporarily lulling the American Senate into a sense of security as to the one domestic nature of these matters, on the one hand, and its basic internationalist ideology, on the other. Consequently statements of the special committee in each of these instances are halfhearted and unconvincing. In fact they harbor an invitation, poorly concealed, to the World Court at some future date to assume jurisdiction over any or all of these vital issues. With the introduction of the State Department declaration however, the tactics of the special committee reveal themselves as startlingly sinister.

a. *Immigration.*—Conceding that "the matter is not one of solely domestic concern" the special committee states that "nevertheless, international law con-

tains no rules for the regulation of a State's immigration policy. The imposition of restrictions on immigration is an ancient practice of states." Again "in the present state of international law, and apart from any restriction which might be self-imposed by treaty, matters of immigration are thus quite clearly within the domestic jurisdiction of the host state, and we know of no responsible authority on which the Court could base a holding to the contrary."

No responsible authority? Only that of the State Department of the United States of America.

Furthermore certain statements emanating from United Nations sources concerning the worldwide significance of immigration problems may be found quite useful for the World Court.

Any American citizen who fails to sense the danger of an influx of tens of millions of immigrants following the repeal of the Connally reservation had better pinch himself awake. It would be well for him to adjust himself to the mentality of the One-Worlders who ask "Why should Americans be permitted the exclusive luxury of the vast, fertile acreage of the American Continent when hundreds of millions elsewhere in the world are huddled together in starving masses? Does not international justice demand an even sharing?"

The world's concern with a possible "population explosion" has become so insistent as to make it a factor in the coming American presidential election. One reads daily of the fact that three new babies are born every second and we are asked "if all they face is grinding poverty will not their fury shake the world?" What a temptation, what a challenge, what an opportunity for the grade B judge to write his name in history by saving the peace of the world with a stroke of the pen. Merely admit 50 million or 100 million immigrants into the opulent American countryside. Surely if the American people wish to destroy this last hope for the starving millions of the world by submerging themselves in a tidal wave of humanity, they should do it on their own volition and constitutionally, not because some alien judge commands them.

b. Tariffs.—The special committee states that "So far as we are advised no state has claimed that customary international law restricts the imposition by any state of tariffs or other trade barriers, nor has any international tribunal suggested the existence of such legal restrictions. American tariffs should therefore, be regarded by the Court as within the domestic jurisdiction of the United States."

That is the opinion of the special committee. Contra, the State Department of the United States of America.

c. Panama Canal.—The special committee concedes that "it may be argued" that the United States has granted certain rights with respect to the Panama Canal to the world generally. There seems to be some doubt as to whether the domestic rights of the United States include the right to protect itself in time of war. This reasoning is based primarily on the existence of the Hay-Pauncefote Treaty with Great Britain coupled with the principle of dedication to the use of the whole world. When to this treaty and to this principle is added the weight of the State Department declaration of 1950, the case for the unhampered jurisdiction of the World Court over the Panama Canal is more than even an Alger Hiss could expect.

Any American citizen who believes that the Connally reservation can be eliminated without kissing goodbye to further American control of the Panama Canal, had best open his eyes to realities and look into the minds of the one-world planners before succumbing to their blandishments.

3. The integrity of the World Court

The special committee devotes a substantial part of its report to establishing the integrity of the Court and its members. The declaration of the State Department of 1950 renders this issue quite irrelevant insofar as the Connally reservation is concerned. The reaction of the World Court justices to this declaration will not be determined by their integrity or lack of integrity. In fact, how could we expect the most learned and sincere of judges to appraise the significance of the State Department declaration at anything below its face value? The judge possessing the highest qualifications and character could hardly be expected, because of such qualifications and character to challenge the validity of an official statement of the American Government untraced for a whole decade, because of any consideration of opposing popular opinion or contrary understanding on the part of the American public. Such a judge must be expected to recognize the great victory of American internationalists which

reached its apparent peak in 1950 and from which, as I have indicated, any official attempt to retreat may well be regarded as futile and ineffective.

The probability therefore, that any World Court, even if composed exclusively of grade A type judges, would assume jurisdiction over cherished American domestic affairs following repeal of the Connally reservation is obvious. And when we face realities concerning this World Court for which the special committee is attempting to drum up business the danger becomes ominous. For this World Court is already partially hostile to the United States and potentially completely so. To add further to the irony of this situation, the Iron Curtain countries have not submitted themselves to the jurisdiction of the Court. Thus the judges from the Iron Curtain countries are empowered to adjudicate issues involving the United States and other nations without any danger of setting precedents applicable to their own countries.

It may be thought that as long as internationalists are in the saddle in Washington following the achievement of 1950 there is little difference between their judgment and that of the World Court as to the meaning of "within the domestic jurisdiction." And the fact is that were we mature in our appraisal of the existing international scene, created by the one-world victory, we would withdraw from this World Court overnight. As long as we continue entrapped however, it is infinitely preferable to have decisions as to domestic jurisdiction made by our own representatives. Their actions will be observable by the public at all times and subject to direction in the event that their internationalist fervor carries them too far.

It is interesting to observe that in the *Interhandel* case before the World Court, while the matter of jurisdiction was decided on other grounds, the American representative did not have the temerity to follow the State Department declaration of 1950.

In the mind of an old fashioned nationalist or "isolationist" the proposal (a) to eliminate the Connally reservation and (b) to subject the United States to the jurisdiction of this World Court by treaty provision, can only emanate from some sort of suicidal folly on the part of the American Nation.

4. *An easy way out*

The special committee assures the American Senators and other citizens that the Connally reservation can be eliminated without any permanent serious results because there are ways out in case the going proves uncomfortable.

a. The special committee states that "under the United States adherence it may now at any time terminate its entire declaration of adherence, including its acceptance of jurisdiction on 6 months' notice."

This is an astonishing suggestion coming from a group which is so concerned with high principles of world leadership for the United States. If these principles are such as to now impel this Nation to voluntarily subject itself to the unhampered powers of this World Court how can it ever, consistent with these principles, withdraw from its commitment to the world no matter what the provocation?

b. The special committee suggests that should the World Court engage in "an errant incursion into domestic affairs" the United States may exercise "the veto power when the case went before the Security Council for enforcement."

I have difficulty apprehending the full significance of this suggestion. I am compelled to accept it as one of the most flagrant instances of irresponsibility on the part of a supposedly sincere group of American lawyers that I have ever encountered. I trust that our enemies behind the Iron Curtain who have resorted to the veto so many times will not be too encouraged by this incredible proposal of the special committee.

It illustrates, of course, the inexorable fact that any judgment of the World Court is above all possibility of appeal. To counteract this grim reality, the special committee blandly asserts that the American Nation can repudiate its obligations whenever they are distasteful by resort to the veto procedure of the United Nations. And this suggestion is made in the face of the creed of the internationalists for whom the World Court, will of course, make "world law."

Let the American Senators and other citizens face the fact that once we have eliminated the Connally reservation and committed ourselves to the mercies of this World Court there can be no retreat with both peace and honor.

III. THE ROLE OF THE AMERICAN BAR ASSOCIATION

There is no organization in the United States which will have greater influence in the settlement of the issue concerning the Connally reservation, with Congress and with the American public, than the American Bar Association. This influence should be regarded as a trust to be managed with the most rigid adherence to principle. No matter what groups in the association, even if they represent a majority of the membership, may have decided on this issue in their own minds, certainly they owe a duty to anxious Senators, Congressmen, and other American citizens to present a complete and fair picture of all the issues and consequences involved. Whether these groups believe that the field involves merely a disposition of international matters as traditionally classified, certainly there is sufficient evidence to warrant a suspicion that the issues involved may include a complete revamping of the American constitutional system and a delegation of sovereignty to a foreign court as a move toward a one-world government. However fanciful such fears may be, no member of the American Bar Association should claim to be endowed with such omniscience as to bid his fellow citizens to dismiss such apprehension without inquiry.

The record of the American Bar Association to date, as I view it, falls far short of these high standards. Let me count the ways.

1. The report of the section of international and comparative law of August 1959, which I have been discussing, was prepared by a special committee instructed "to study thoroughly the Connally reservation to the U.S. declaration accepting the compulsory jurisdiction of the International Court of Justice, its effects and practice, and the pros and cons as to whether or not an attempt should be made to have it withdrawn." How grievously the report fails to comply with this objective I leave to the reader. Let me point out that this is not a question of a difference of opinion between the members of the special committee and the chairman on the one hand, and such members of the association as Frank Holman, Alfred Schweppe, and Clarence Manion on the other. Such a difference of opinion would demand respect as being held in good faith. Nor is it even a question as to what the members of the special committee and the chairman of the section on the one hand, and such members of the association as Messrs. Holman, Schweppe, and Manion on the other, believe may be the effect on this World Court of the State Department declaration of 1950 and similar events of the past decade. For the members of the special committee and the chairman of the section to believe that such declaration and such occurrences may be completely ignored in appraising possible action by the World Court stretches my credulity, but it would be difficult to charge bad faith. However, when we come to the real point which is, do the members of the special committee and the chairman of the section regard their appraisal of the World Court justices, in the light of the State Department declaration and other occurrences, as so dependable and infallible as to warrant the withholding from the American Senators and Congressmen and other citizens of the slightest reference to this declaration and other similar occurrences? Correspondence that I have had with the chairman of the section reveals that this withholding is deliberate. This position passes the bounds of credulity. I am incapable of attributing good faith to any group of members of the association who are sufficiently reckless to play the part of God when the fate of 179 million fellow citizens is in such jeopardy.

2. *The House of Delegates*

The special committee, in the year 1959, asserts unreservedly that the House of Delegates favors the elimination of the Connally reservation. This assertion is based on action taken prior to 1950. The assertion is made in the teeth of strong evidence that the intervening events, including the State Department declaration of 1950, may have created a condition today where the judgment of the House of Delegates is at least subject to conjecture. It is unfair and misleading for any section, committee or member of the association to make such a sweeping statement concerning the position of the House of Delegates without qualification based on intervening history, particularly in view of the forthright and impelling messages from Frank E. Holman, president of the association in 1948, and Messrs. Schweppe and Manion.

3. *The Report of the Committee on International Law Planning for 1958*

When the special committee makes reference to this report in support of its own position, it is pulling itself up by its bootstraps. This 1958 Report of

the Committee on International Law Planning avoids all references to the State Department declaration of 1950 and similar developments of the last decade just as carefully as the special committee has done in its 1950 report.

4. The special committee on world peace through law and its regional conferences of 1950

The chairman of the committee on world peace through law is unquestionably sincerely devoted to one of the highest ideals that man can attain—world peace. No one can challenge his good faith when he states his personal belief that the repeal of the Connally reservation will promote this high ideal. However, I wish to suggest that in his zeal he has shown a propensity to regard each ally, marching with him toward world peace through law, as ipso facto, an enemy of the Connally reservation. This I believe is demonstrably unwarranted. For one important illustration let me refer again to the speech of the Vice President in Chicago on October 5, 1950. Here the Vice President said: "If we rule out, as we have and should, the use of force or threats of force as a means of settling differences where negotiations reach an impasse, the sole alternative is the establishment of the rule of law in international affairs.

"There are some who suggest that the only answer is that nations should agree to submit all their disagreements to some new, all-powerful world tribunal. However well intentioned such proposals may be, they are completely unrealistic in the present world context. As the distinguished Washington correspondent of the New York Times, Mr. Arthur Krock, said to me recently, 'Great powers will submit details to arbitration but never their basic interests.'

"But the fact that the obstacles to establishing a rule of law among nations are formidable is no reason for wringing our hands in despair and doing nothing. * * * That is why I repeat today the proposals that I made before the American Academy of Political Science in April. The United States should affirmatively explore ways in which its controversies with other nations can be submitted to and decided by the International Court of Justice at The Hague, an impartial tribunal of high quality which in these days of crowded calendars probably has less business before it than any court in the world.

"One practical step is that the United States should take the initiative in proposing that in future international agreements provisions should be included to the effect that disputes which may arise as to the interpretation of the agreement should be submitted to the International Court and that the nations signing the agreement should be bound by the decision of the court in such cases. There is no more effective way that we can show the world by our example that the rule of law, even in the most trying circumstances, is the one system which all free men of good will must support.

"It is significant to note that the American Bar Association has thrown its enormous moral authority and its practical influence into the fight for world peace under law by resolutions adopted this spring at its annual convention and by the establishment of a special study and action unit to make this influence felt throughout the world community. Two recent presidents of the bar, Charles Rhyne and Ross Malone, as well as the present holder of that office, John D. Randall, are eloquent and tireless advocates for internationalizing the concept of rule of law by every practical means. Appropriately, the bar association is your next-door neighbor on this new campus. This is a tangible sign of the unity between legal scholarship and training and practice, between principle and action."

Furthermore, the words of the late Secretary Dulles on January 31, 1950, while expressing complete accord with the objectives of the committee on world peace through law, went no further than to pledge serious consideration of recommendations which this committee might make. While the confidence of the Vice President and the late Secretary in this existing World Court would seem to be quite divergent, their basic views on the question of repealing the Connally reservation would seem to parallel each other.

In its report for 1950 the committee on world peace through law stated that "the consensus of the participants * * * was that the unilateral determination clause of this reservation should be eliminated." This action which is referred to in the special committee report, in my opinion, deserves some examination. I believe that the proceedings preceding votes on the question of the Connally reservation taken at the regional meetings should be revealed at least for the purpose of indicating whether the material presented to any particular meeting was historically or otherwise adequate. I have, for many weeks, been attempting

to obtain the records of these meetings without success. I have even been informed that the transcripts are to be revealed only to participants. Without such clarification I regard the unqualified statements of the report of the committee on world peace through law as unworthy of any committee of the association operating according to the principles which should apply to all committee action.

5. *The American Bar Association Journal*

In the issue of November 1959, the Journal presented in full the address of Attorney General William P. Rogers given at the annual meeting in August 1959. This speech, of course, urges the elimination of the Connally reservation. The fact that the Journal has presented no similar material supporting the retention of the Connally reservation can perhaps not be blamed on the Journal. The proceedings directed by the high officers of the organization have not to date included in their scope any platform for an opponent to the Attorney General. However, acting under misapprehension, the Attorney General made a statement of significance which, on examination, proves to be unfounded. He said that, following the state of the Union message, and as a part of the intensification of effort referred to by the President, both the Secretary of State Dulles and Secretary of State Herter supported a proposal in the Senate of the United States to strengthen the International Court of Justice by repealing the so-called Connally reservation. Correspondence with representatives of the State Department which I have had reveals that no statement of support for the Humphrey resolution by John Foster Dulles or Christian A. Herter ever emanated from the State Department, as had been the understanding of Attorney General Rogers. As a matter of fact, the representative of the State Department referred to the speech of Mr. Dulles on January 31, 1959, before the New York Bar, to which I have referred above, as indicating the views of Mr. Dulles. I invite the attention of anyone interested to Mr. Dulles' speech to see whether or not his position was not definitely opposed to the principles of enhancement of the powers of this World Court. The State Department representative up to December 12, 1959, could give me no reference to any evidence of the position of Mr. Herter nor has any such evidence become available elsewhere, certainly not prior to November 1959 when the Journal printed the speech of Attorney General Rogers.

When will the American Bar Association Journal see fit to correct or comment upon the significant statements which appeared in its pages of the November issue concerning Mr. Dulles, Mr. Herter, and the Humphrey resolution?

6. *The American Bar Association*

In the issue of November 15, 1959, appeared the following statement: "Majority editorial opinion in leading newspapers throughout the country has been strongly in support of the report, published last month by a committee of the ABA international and comparative law section, urging Congress to withdraw the Connally reservation by which the United States limits its adherence to the International Court of Justice. The New Mexico State Bar, at its annual convention October 24, adopted a formal resolution favoring repeal." Upon my inquiry for references first to the editorial statements representing the "minority" views and finally all references to editorials expressing either view, to the editor making the above statement, I was referred to the Wall Street Journal as a member of the minority group; I was told that the editorials in question had been passed on to various committees of the association and I have, up to date, been unable to obtain further reference, either to the editorial comments or the committees to whom the material was supposed to have been sent. The chairman of the committee on international and comparative law has for several weeks ignored my request for any editorials referred to his committee or any section thereof. When I commented on the fact that the American Bar Association News announced the action by the Bar Association of New Mexico favoring the repeal of the Connally reservation taken in October of this year but had failed to mention action favoring the Connally reservation taken in July by the Texas Bar Association, I was supplied with a bulletin entitled "Coordinator and Public Relations Bulletin," dated August 1, 1959, in which reference was made to the action in Texas. I understand that the circulation of the bulletin is only a percentage of that of the American Bar Association News, and even at that, so anxious were the editors to minimize the effect of the action in Texas that they highlighted the assertion that there was considerable debate on the floor.

It is obvious to the world that the forces for internationalism operating within the framework of the American Bar Association have been having their way, with little apparent opposition, at all times in connection with the proposed repeal of the Connally reservation. I do not challenge the right of the internationalists to exert every legitimate effort in the pursuit of their objectives. I do vigorously challenge their right or the rights of the officers or members of the association to present a distorted picture of this vital issue through any form of concealment of facts which any intelligent Senator, Congressman, or other citizen might regard as important in determining this issue.

I believe it is the duty of the officers of the association to permit the views of those members who oppose the ambitions of the internationalists to be expressed when such opposition exists. For my part, I am unable to stretch the horizons of my loyalty which is simple and old fashioned. I cannot accustom myself to the current scene where Americans with expanded loyalties who have discarded their flag and their country in deference to powerful foreign powers—an action which was formerly called high treason—still find themselves welcome guests on college campuses or touted candidates for reinstatement in places of highest trust; I find myself in spite of the world-shattering changes which have affected, apparently, so many of my fellow citizens, still holding allegiance to my country and its one flag, the Stars and Stripes, under God.

I hold and will acknowledge no allegiance to any debased segment of a godless, one-world government. I regard the repeal of the Connally reservation as an irretraceable step into this godless, one-world government. I see no power anywhere in this Nation that can properly impel me into any such debasement. I will never acknowledge the legitimacy of any action taken by this fantastically constituted World Court with respect to any of my rights and privileges as an American citizen. This attitude of mine is unimportant if it is the attitude of a single citizen. It is my hope and belief that if the American public is given a fair opportunity to appraise the concealed significance of the action being urged so fervently from the White House and elsewhere and in which the American Bar Association is being presented as a willing accomplice, an overwhelming voice of protest will be heard from coast to coast.

The CHAIRMAN. Mr. Paul Walter, of Cleveland, Ohio, representing the United World Federalists.

STATEMENT OF PAUL WALTER, FIRST VICE PRESIDENT, UNITED WORLD FEDERALISTS, INC.

Mr. WALTER. I would like to introduce myself. My name is Paul Walter, an attorney from Cleveland, Ohio. I am the first vice president of the United World Federalists of America.

For 15 years I managed the affairs, politically, of the late Senator Robert Taft, of Ohio, and have had occasion to discuss with him many times the problems which are before your committee.

I would like to point out that in addition to the statement that we have filed, we also appended to it as an exhibit President Eisenhower's reference to this problem and the recent state of the Union message on June 7.

I believe you put that in the record this morning but I would like to mention the last sentence in his statement. He has urged the Senate to take action on this resolution; he said:

If this is done, I intend to urge similar acceptance of the Court's jurisdiction by every member of the United Nations.

I think it is important to realize that this time, the last year in which he is serving as President, he has a unique position in international affairs, and that this type of leadership is able to be exercised by him, and you may lose the opportunity after he has left office.

I would like also to point out that we attached to our statement Attorney General William P. Rogers's address to the American Bar Association at Miami, Fla., in August, 1959. I would like to make that a part of the record.

The CHAIRMAN. Yes.

Mr. WALTER. In Vice President Nixon's address of April 13, 1959, which has been much discussed, he quoted the late Senator Taft in this language:

Let us see what a man who had one of the most brilliant political and legal minds in the Nation's history had to say in this regard. Commenting on some of the problems of international organization the late Senator Robert Taft said:

"I do not see how we can hope to secure permanent peace in the world except by establishing law between nations and equal justice under law. It may be a long hard course, but I believe that the public opinion of the world can be led along that course, so that the time will come when that public opinion will support the decision of any reasonable impartial tribunal based on justice."

Senator Hickenlooper was raising the question before, of what enforces the Court's opinion.

There are not enough policemen or enough members of the armed services to enforce any court's opinions unless basically there is a public opinion, and the mores of the time that will accept the decisions of the Court.

As a practicing lawyer I have practiced in the courts of my city, my State, and my Nation, and many times, a decision of these courts was unfavorable to my clients, and yet the clients have learned in this country to go along with the decisions of an impartial tribunal.

VIEWS OF UNITED WORLD FEDERALISTS

Our group of United World Federalists is a nonpartisan, nonprofit organization of Americans. Our primary interest lies in the development of international institutions of law adequate to assure world peace by maintaining law and order with justice and freedom.

We subscribe to these fundamental truths: There can be no peace without law; there can be no justice without law; there can be no true freedom except as it is guaranteed and protected by law. If our country seeks freedom, justice and peace in our indivisible world, we must necessarily support the development of those institutions which contribute to a growing fabric of international or world law. To do otherwise would be to turn our backs on those fundamental principles on which the very greatness of our country is based. To do otherwise would be to neglect the foundations on which a lasting peace must be built.

United World Federalists believes that the development of the rule of law and the institutions which embody this rule form the greatest contribution of Western society to the welfare and peace of the human race. We take pride in the fact that our country has a government of law and not of men. We take pride in the words inscribed on our Supreme Court building: "Equal Justice Under Law." If these precepts are valid for our country and have contributed to building the way of life that we hold dear, then their extension onto the world level is a development which we should welcome and support.

REASONS FOR SUPPORT OF SENATE RESOLUTION 94

We have stated the above because we feel that this background is fundamental to any consideration of Senate Resolution 94. Passage of this resolution would remove the United States from the position of demanding to be the judge in its own case. It would remove the self-judging clause from our adherence to the jurisdiction of the International Court of Justice. We would join the 32 nations which have already accepted the compulsory jurisdiction of the Court without this reservation and would leave the company of the 6 nations, other than ourselves, which still maintain this reservation: Mexico, Liberia, Pakistan, the Sudan, and the Union of South Africa. We would join our close allies, the United Kingdom and France, in their support of the Court and the rule of law. United World Federalists hopes that we will take this step forward and supports Senate Resolution 94.

We consider this step a very significant and important one. It is a step in the right direction. We believe it will be beneficial to the United States and will show the world by deed that we desire to substitute the rule of law for the rule of force. Indeed, I would say that the passage of this resolution would, in the field of world opinion, be as effective as the firing of the rocket by the Russians in the Pacific prior to the summit meeting.

PROTECTION OF LAW FOR BUSINESS INTERESTS

Within our country we have a vast industrial complex and millions of private and business interests. These could not operate and flourish as they do if it were not for the certainty and protection afforded by city, State, and Federal laws. How many thousands of cases are handled every year by the courts of our country? And we have got to accept this as a part of our everyday life.

Likewise today, U.S. business interests have billions of dollars invested overseas and vast new potential investment areas are opening up. If these interests are to have the protection of law, it is essential that the international law be further developed and international courts be available for just adjudication of grievances.

Because of the position our country occupies today, we have more overseas interests, more treaties, and more citizens traveling abroad than any other nation in the world. We therefore have more need for the protection of law abroad than any other country. Since the International Court of Justice has ruled that any reservation made by a party to a dispute may be used by all other parties, we have placed ourselves, by this reservation, in the position of giving any nation against which we feel we have a just claim the legal right to claim that the matter is solely within its domestic jurisdiction and thus to cause the Court to throw out our case. Since it is we who have so many farflung interests, this is just not good business.

LIMITATIONS ON COURT'S JURISDICTION

Were there indications either legally or in past practices that the Court might attempt to exceed its authority or area of jurisdiction, we would be concerned. We know of no such indications. An August

1959 report of the American Bar Association's Section of International and Comparative Law states:

The cases decided by the Court do not indicate any lack of judicial or judicial discretion by the Court. On the contrary, the Court has seemed quite reluctant to extend its jurisdiction.

Further, this jurisdiction is carefully set forth and circumscribed:

(1) It is limited to "legal" disputes involving "international" matters; (2) it exists only "in relation to any other state accepting the same obligation"; (3) it excludes domestic disputes and this is further buttressed by the provisions of article 2 of the United Nations Charter of which the Statute of the Court is an integral part.

CHOICES

So long as our country continues to limit its adherence to the International Court of Justice by this self-judging condition, we make a mockery of our own professions of adherence to the principle of a rule of law. We believe that there are basically only two choices: To do nothing and leave the initiative to those who live by the rule of force, abhorring the majesty and power of law, or to move decisively forward to promote the rule of law and a system of justice that will buttress the basic values of the free world.

United World Federalists chooses the latter alternative. We support the measure before your committee.

I have also brought some photostat copies from the Encyclopedia Britannica discussing the Permanent Court of International Justice, and also discussing the International Court of Justice, and I would like to have leave to present those to the committee because I think they have a great deal of fine background information.

The CHAIRMAN. Thank you very much, Mr. Walter.

Do you have any questions?

BASIS FOR RECIPROCAL NATURE OF RESERVATION

Senator HICKENLOOPER. Just one question, Mr. Walter.

Where lies the basis for the Court's decision that a party which has no reservation may exercise that reservation if another party has made such reservation, as in the Norway case against France?

Mr. WALTER. The Norway case against France is where the issue was raised, and it was after that issue was raised that France took its reservation out of its exception.

Senator HICKENLOOPER. Did France take the reservation, exercise the right, or did Norway exercise its right?

Mr. WALTER. No; Norway exercised its right.

Senator HICKENLOOPER. Well, where lies the basis for Norway's exercising its right?

Mr. WALTER. It goes back to a fundamental principle of law that where one person has a reservation in a contract to protect himself, in equity the other person has the same right. This is an American basic concept.

I presume that is why they acted upon it. Apparently from the statements of various decisions of judges and their decisions, it is apparent that some of the judges feel that way.

Senator HICKENLOOPER. Of course there is now nothing in the Statute that gives that right?

Mr. WALTER. I understand so, and perhaps the Statute would even override, since we accepted the basic U.N. Charter, and perhaps the Statute overrides our reservation. That is a question that might be decided by the Court some day, I do not know. But I do believe that we are in a position of saying to the rest of the world that we have a fundamental belief in the fairness of courts and, certainly, I, as a Republican—and I try cases in front of Democratic judges, and you raise questions of jurisdiction before them, and you believe there is a basic fundamental honesty in our judicial system—feel that if these questions are raised, the type and caliber of men who are placed on the bench or the method by which they are chosen, and there are specific provisions in the U.N. Charter as to how these judges are chosen, and the people they may represent, that I would be far more willing to trust my faith to a court than I would to a firing squad.

Senator HICKENLOOPER. Well, I do not quite get the analogy, but we will not take the time to argue that.

Mr. WALTER. No; we will discuss that later. Thank you.

Senator HICKENLOOPER. That is all.

The CHAIRMAN. Thank you very much, Mr. Walter.

(Attorney General Rogers' address to the American Bar Association at Miami, Fla., August 1959, and the excerpts from the Encyclopedia Britannica referred to above follow:)

[Excerpts from the American Bar Association Journal, August 1959]

OUR GREAT GOAL: PEACE UNDER LAW

Attorney General William P. Rogers' address to the American Bar Association at Miami, Fla., August 1959

First, the administration of justice in the United States is on display in every part of the world. When we talk about competing with international communism in the realm of ideas, we are talking in large measure about the ideas which are the basis of our legal system.

Second, in the long view the main hope for peace is that nations will be wise enough not to rely on sheer strength in dealing with each other but will move toward establishing systems based on considerations of law and justice in the resolution of international disputes. Nations have readily paid lipservice to the soundness of this proposition but progress in this area has been tragically slow.

The United States accepted the jurisdiction of the International Court in 1946. The history of our declaration of acceptance is significant.

The resolution introduced in the Senate with bipartisan support contained a reservation excluding from the Court's jurisdiction "Disputes with regard to matters which are essentially within the domestic jurisdiction of the United States."

Public hearings were conducted on the resolution in this form, and it was unanimously endorsed by the Senate Committee on Foreign Relations. Its report stated:

"The question of what is properly a matter of international law is, in case of dispute, appropriate for decision by the Court itself, since, if it were left to the decision of each individual state, it would be possible to withhold any case from adjudication on the plea that it is a matter of domestic jurisdiction."

Nevertheless, on the floor of the Senate the Connally amendment was adopted adding to our reservation the clause "as determined by the United States of America."

Thus, in the declaration of acceptance by the United States our reservation is that the Court shall not have jurisdiction of "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America."

We were the first nation to provide that the jurisdiction of the Court should be determined not by the Court but by us. Following our example seven other nations made similar reservations.

Furthermore, the rule of reciprocity applies so that any nation may invoke the terms of the reservations of any nation with which it is involved in a dispute.

It is plain to see why the existence of this type of reservation has had an impact on the effectiveness of the Court. Imagine the impairment which would result to the court system in the United States if the defendant in a lawsuit had the right to determine for himself whether his case was within the court's jurisdiction.

The Court's statute explicitly limits its jurisdiction to international legal disputes. By the plain terms of the grant, it has no jurisdiction over domestic matters. So the "as determined by the United States of America" clause adds up, in the eyes of other nations at least, to a vote of no confidence that the Court will limit the cases it hears to those within its jurisdiction.

There are those who are concerned that the Court might exceed its jurisdiction. It is argued that our sovereignty might thus be impaired. As a practical matter the argument as to possible loss of sovereignty is not persuasive.

The International Court of Justice, in the final analysis, depends largely on world opinion for the enforcement of its decisions—in fact for the participation of the nations. It has carefully stayed within the limits of its jurisdiction as provided by its basic statute. There is no reason to believe that the Court would invade areas properly reserved to domestic jurisdiction.

In July of this year, France, surely as sensitive as we are in matters of sovereignty, withdrew her reservation containing the equivalent of the Connally amendment.

Thus, today, six NATO nations have not even deemed it necessary to make any express reservation with respect to domestic disputes. Three others—Canada, Great Britain, and now France—have done nothing more than make explicit the exclusion of domestic questions from the Court's jurisdiction. Hence, of the 10 NATO nations which have accepted the Court's jurisdiction, the United States is the only one which denies to the Court the right to determine its own jurisdiction.

For more than 50 years our statesmen have advocated an impartial International Court to decide disputes between nations. In 1907, Secretary of State Elihu Root, in his instructions to our delegates at the Second Peace Conference at The Hague, said we should develop a permanent tribunal composed of judges who will devote their entire time to the trial and decision of international causes by judicial methods.

In 1925, President Coolidge, in his inaugural address, advocated the "establishment of a tribunal for the administration of evenhanded justice between nation and nation." As he put it, "The weight of our enormous influence must be cast upon the side of a reign not of force, but of law and trial, not by battle, but by reason."

Every President since World War I has advocated the submission of international legal disputes to a judicial tribunal.

A half century of debate has resulted in little progress. It must be obvious to everyone that action in this field is long overdue. That is why our profession should urge the Senate of the United States to act at the earliest possible time on this important matter of the jurisdiction of the International Court of Justice.

[Excerpts from Encyclopedia Britannica]

INTERNATIONAL COURT OF JUSTICE

For generations eminent statesmen, private persons and various organizations—national and international—have devoted much time and energy to efforts looking to the peaceful settlement of disputes between nations. Various methods of settlement have been advocated and at times resorted to, such as the use of good offices by other states, commissions of inquiry and conciliation, arbitration and judicial settlement.

Arbitration as a form of judicial settlement has been used by states over a very long period of time—not generally but frequently. Many bilateral and a number of multilateral treaties and conventions providing for arbitration have

been concluded. The multilateral Convention for the Pacific Settlement of International Disputes concluded at the first peace conference held at The Hague, Netherlands in 1899 contained elaborate provisions for arbitration, including the establishment by the signatories of a panel of jurists, called the Permanent Court of Arbitration, to which each state should appoint four members, and from which nations desiring to go to arbitration might choose competent arbitrators. When the second Hague Peace conference was called in 1907, U.S. Secretary of State Elihu Root issued instructions to the U.S. delegation in which he observed that the principal objection to arbitration rested not upon the unwillingness of nations to submit their controversies to impartial arbitration but upon apprehension that the arbitrations would not be impartial. He instructed the delegates to try to have the Permanent Court of Arbitration developed into a permanent tribunal composed of judges "who are judicial officers and nothing else, who are paid adequate salaries, who have no other occupation, and who will devote their entire time to the trial and decision of international causes by judicial methods and under a sense of judicial responsibility."

The 1899 Convention for the Pacific Settlement of International Disputes was revised, but as revised it fell far short of the pattern outlined by Root. It did not provide for judges "who are judicial officers and nothing else" and who would "devote their entire time to the trial and decision of international causes." Rather it continued the system of a panel of jurists from which arbitrators might or might not be chosen for particular cases.

The 1907 conference prepared and recommended to the powers represented at the conference a draft convention to establish a court of arbitral justice composed of judges to be elected for fixed periods of service and on a salary basis. But the project was not adopted by the states and the court was never established. Nevertheless the draft had its influence on subsequent developments.

The next notable step in the process of developing an international judiciary was taken by the League of Nations in 1920, when pursuant to article 14 of the covenant of the League, it took steps to establish the Permanent Court of International Justice (*q.v.*). That court functioned successfully from 1922 until its operations were interrupted by World War II. It was governed by a statute drafted by a commission of jurists on which Root served as a member. He was thus able to see the views which he had expressed in 1907 emerge in the establishment of a court of the kind he had then visualized.

The United States did not become a party to the statute of the Permanent court, although efforts to have it do so were made in turn by Secretaries of State Charles E. Hughes, Frank B. Kellogg and Henry L. Stimson, supported by Presidents Warren G. Harding and Herbert Hoover, as well as by many private citizens who felt that such a tribunal held great potentialities for peaceful settlement of international disputes. A senate resolution for adherence that came to a vote on January 29, 1935, failed to obtain the requisite two-thirds vote, and no further action to have the United States become a party to the statute was taken. Yet throughout the period of the court a U.S. jurist was on the bench—first, John Bassett Moore, followed by Charles Evans Hughes, Frank B. Kellogg and Manley O. Hudson.

Establishment of International Court of Justice.—Following World War II and the advent of the United Nations, the League of Nations was dissolved and with it the Permanent Court of International Justice. But that court was not dissolved until the new one—the International Court of Justice—had been established. By this time the nations, including the United States, were thoroughly convinced that a court of justice must have first rank in any organization for the maintenance of peace. This explains why the court was featured in the charter of the United Nations and why the statute was unanimously approved by the United States senate.

Article 92 of the charter states:

"The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present charter."

Article 93 states that all members of the United Nations are *ipso facto* parties to the statute and that states not members of the United Nations may become parties on conditions to be determined in each case by the UN general assembly upon recommendation of the Security council.

The court consists of 15 judges, no two of whom may be nationals of the same state, elected by the general assembly and the Security council. They do

not have life tenure as do members of the supreme court of the United States, for example, but are elected for periods of nine years and are eligible for re-election.

The seat of the court is at The Hague, but it may hold sessions elsewhere whenever it considers it desirable. Its first session was held at The Hague in April and May 1946.

It is a continuing body. The statute provides that it shall remain permanently in session, except during judicial vacations. It is also an autonomous body. It elects its president and vice-president, appoints its registrar and provides for the appointment of such other officers and clerical staff as may be necessary. The president and the registrar are required to reside at the seat of the court.

The judges.—The judges, who must possess certain specified qualifications, do not represent the states from which they are chosen. They represent the entire international community of states. They are not selected by the governments of their states or even nominated by them; they are nominated rather by the national groups in the Permanent Court of Arbitration referred to above, or, in the case of states not represented on the Permanent Court of Arbitration, by national groups appointed for that purpose by their governments.

When the draft statute was under consideration by the commission of jurists which met in Washington, D.C., in April 1945 to prepare a draft for submission to the San Francisco conference soon to be convened, some of the delegates thought that the nominations should be made by the respective governments, but the prevailing view was that nominations should be removed as far as possible from political considerations; hence the adoption of the method just outlined.

Comparable safeguards were placed around the election of the judges. The statute provided that in such elections the general assembly and the Security council should proceed independently of each other, and that at every election the electors should bear in mind not only that the persons to be elected should individually possess the qualifications required "but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured." Those candidates who obtain an absolute majority of votes in both the general assembly and the security council are to be considered as elected. Further procedure is provided for the situation, where after the first meeting for the purpose of the election, one or more seats remain to be filled.

The judges receive annual salaries reasonably commensurate with their status. But they must be prepared to accept certain inhibitions, *i.e.*, they must refrain from all activities incompatible with their judicial functions. Specifically, they are forbidden to exercise any political or administrative function, or to engage in any other occupation of a professional nature; they are not permitted to act as agent, counsel or advocate in any case, and no member may participate in the decision of a case in which he has previously taken part as agent, counsel or advocate for one of the parties, or as a member of a national or international court, or a commission of inquiry, "or in any other capacity."

The purpose of the statute is to have at all times a court that is entirely free from bias or any preconceived notion as to the merits of any case coming before it. Each member is required, before taking up his duties, to "make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously." In order to facilitate the proper exercise of their judicial functions the members, when engaged on the business of the court, enjoy diplomatic privileges and immunities. All members are bound to hold themselves permanently at the disposal of the court.

While nine judges constitute a quorum, the statute requires that the full court shall sit except when it is expressly provided otherwise. The court may dispense with the sitting of one or more judges "according to circumstances and in rotation," provided the number of available judges is not thereby reduced below 11. In practice, the full court sits in all cases except where a judge is disqualified by reason of some previous connection with the case or is prevented by illness or other serious reasons from attending.

No judge may be dismissed unless in the opinion of all the others he has ceased to fulfill the required conditions.

Vacancies resulting from death or otherwise must be filled by the same method as that laid down for the first election. A member elected to replace a member whose term of office has not expired holds office for the remainder of his predecessor's term.

Ad hoc judges.—Obviously, since there are only 15 judges, cases are sometimes presented by States which have no national on the court. While the statute provides that judges of the nationality of each of the parties retain their right to sit in the case before the court, it also provides that, if the court includes upon the bench a judge of the nationality of one of the parties, the other party may choose a person to sit as judge; also that if the court includes upon the bench no judge of the nationality of either party each of the parties may choose a person to sit as judge. This privilege is frequently exercised.

Ad hoc judges receive compensation for each day on which they exercise their functions.

Competence.—Since the function of the court is to pass judgment upon disputes between States, only States may be parties in cases before the court. It is open to all States parties to the statute and to such other States as comply with conditions laid down by the security council, which conditions must not, in any case, place the parties in a position of inequality before the court.

Compulsory jurisdiction.—At the time that the statute was being drafted, there was strong sentiment on the part of certain States, particularly the smaller ones, for giving the court compulsory jurisdiction; i.e., making it possible for any State to bring an action against any other State without the latter's consent. This, it was argued, was warranted by the more than 20 years of satisfactory experience with the Permanent court. The opponents of this view felt that some States were not yet ready to accept compulsory jurisdiction, and that to try to force it upon them might cause them to decline to accept the statute at all. They favoured the adoption of the optional provisions in article 36 of the statute of the Permanent court. This was agreed upon, and that article became article 36 of the new statute. Under it parties to the statute may at any time file with the secretary-general of the United Nations a declaration accepting compulsory jurisdiction in all legal disputes concerning: (1) the interpretation of a treaty; (2) any question of international law; (3) the existence of any fact which, if established, would constitute a breach of an international obligation; and (4) the nature or extent of the reparation to be made for the breach of an international obligation.

The declaration mentioned may be made unconditionally or on condition of reciprocity on the part of other states, or for a certain time.

It was further provided in article 36 (paragraph 5) that declarations made under the old statute conferring jurisdiction on the Permanent court which were still in force should be deemed, as between the parties to the new statute, to be acceptances of the compulsory jurisdiction of the new court.

The Anglo-Iranian Oil company case (*Great Britain v. Iran*) involved a declaration by Iran in 1938 under article 36 of the statute of the Permanent court. Although the court held that it did not have jurisdiction, it was only because it found that the declaration did not cover that particular case (judgment, July 22, 1952).

The court's jurisdiction was still further extended by article 37 of the statute, which stipulates that whenever a treaty or convention in force "provides for reference of a matter to * * * the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice."

The advisory opinion given July 11, 1950, on the international status of South-West Africa, and the judgment rendered July 1, 1952, in the *Ambatielos* case (*Greece v. Great Britain*) were examples involving article 37 of the statute.

Law applied.—The statute declares it to be the duty of the court to decide disputes in accordance with international law. It applies: (1) international conventions establishing rules recognized by the contending states; (2) international custom as evidence of a general practice accepted as law; (3) the general principles of law recognized by civilized nations; and (4) it may look to judicial decisions and the teachings of the most highly qualified publicists of the various nations as subsidiary means for determining rules of law. It may also decide cases *ex aequo et bono* (that is to say, on the basis of equity), if the parties agree. In the absence of such an agreement it must apply rules of law.

Procedure.—The official languages of the court are French and English; either may be used by the parties. Written pleadings and oral arguments presented in one language are translated by the court's staff into the other. The judgments and opinions are in both languages.

Cases are brought before the court either by the notification to it of a 'special' agreement concluded by the parties or by the unilateral action of one of them.

through a written application addressed to the registrar. The proceedings are in two parts, written and oral. The written proceedings usually consist of two pleadings on each side and supporting documents. Oral arguments by counsel follow the written proceedings.

The court may also hear witnesses and appoint commissions of experts to make investigations and reports when necessary. Both these procedures were followed in the Corfu channel case (*Great Britain v. Albania*) decided April 9, 1949.

The deliberations of the court are in private, but the judgments, which are by a majority vote, are read in open court. Any judge may file a separate opinion if he does not agree in whole or in part with the decision. Few decisions represent the unanimous opinion of the judges. The judgment is final and without appeal.

The question is frequently asked as to how decisions of the court are enforced. This also troubled the minds of some of the delegates at the United Nations Conference on International Organization, held at San Francisco, Calif., when the statute was under consideration. To meet their wishes there was incorporated in article 94 of the charter an undertaking on the part of each member of the United Nations "to comply with the decision of the * * * Court * * * in any case to which it is a party," and a further provision that—

"If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment."

It should be remarked, however, that by the early 1950's there had been no known instance of the failure of a party to a case before the court, or before its predecessor, the Permanent Court of International Justice, to carry out a decision of either court. In the case of the Anglo-Iranian Oil company, *supra*, Iran declined to observe an order issued by the court, July 5, 1951, under article 41 of the statute, indicating interim measures of protection to be taken by the parties pending final decision. But this is not to be regarded as an exception to what has just been stated since such orders do not amount to judgments. They merely indicate provisional measures which the court considers ought to be taken to preserve the rights of the parties.

Advisory opinions.—The court is authorized by article 65 of the statute to give advisory opinions on any legal questions at the request of whatever body may be authorized by or in accordance with the charter of the United Nations to make such a request.

Article 96 of the charter provides that such opinions may be requested by the general assembly or the Security council; also that they may be requested by other organs of the United Nations and specialized agencies, when authorized by the general assembly. Such requests must be laid before the court by means of a written request containing an exact statement of the questions, accompanied by all documents likely to throw light upon them. From this point on, the procedure before the court is somewhat analogous to that followed in contentious cases; that is to say, the registrar gives notice of the request to all states entitled to appear before the court, and the president of the court fixes time limits within which the states wishing to do so may submit written statements or be heard orally at a public sitting to be held for the purpose. States and organizations presenting written or oral statements are allowed, within a specified time, to comment on those submitted by others.

Advisory opinions, like judgments, are delivered in open court.

PERMANENT COURT OF INTERNATIONAL JUSTICE

The Permanent Court of International Justice, first standing judicial tribunal in history to which the nations of the world could refer their disputes, was established under a statute approved by the assembly of the League of Nations and opened on Dec. 16, 1920, for acceptance by states. Its seat was at The Hague. A total of 51 nations, including all the major powers except the United States and the U.S.S.R., eventually accepted the statute. Members of the court were elected for the first time on Sept. 14-16, 1921, and met for organizational purposes on Jan. 30, 1922. The first session for the transaction of judicial business opened June 15, 1922. During its existence, the court gave 32 judgments and 27 advisory opinions. It became moribund with the outbreak of World War II and was dissolved by the final session of the assembly of the League of Nations as of April 19, 1946, bequeathing its experience and traditions to the new International Court of Justice (*q.v.*) created by the United Nations.

EVOLUTION AND ACCOMPLISHMENT

The creation of the Permanent Court of International Justice was the culmination of a trend, evident since the end of the 18th century, to enlarge the scope of orderly adjudication of international disputes. About 100 international arbitrations were held during the 19th century. The Hague conferences of 1890 and 1907 gave further impetus to arbitration by regularizing its procedure and providing for a panel of qualified persons from which arbitrators could be drawn. However, arbitrators selected by the parties to particular disputes were sometimes influenced by extrajudicial considerations and did not fully develop a body of consistent practice and case law which would serve to strengthen the reliance of states on international law. By 1907 the need for a full-time standing international tribunal which could be trusted to develop and apply international law in a spirit of judicial impartiality and responsibility was widely recognized. Attempts at The Hague conference of 1907 to establish such a tribunal failed largely because it seemed impossible to reconcile the interests of the great powers and the smaller states in the appointment of the judges. The creation of the League of Nations in 1920 solved this problem, since an equal voice in the selection of judges could be given to the council of the League, in which the great powers were expected to predominate, and to the assembly, in which the smaller states were to have a large majority.

Preparation of the statute.—Article 14 of the covenant of the League of Nations directed the council of the League to formulate plans for the establishment of a Permanent Court of International Justice. At the invitation of the council, ten international lawyers from as many countries met at The Hague on June 10, 1920, as a committee to prepare such plans. The draft scheme reported by this committee on July 24, 1920, became the basis of the statute of the court as elaborated by the council and the assembly of the League and opened by a protocol of signature for acceptance by states. The protocol was ratified by a sufficient number of states to bring the statute into force by Sept. 1, 1921.

Numerous amendments to the statute were proposed in 1920 by a committee of jurists appointed by the council of the League of Nations. The proposed amendments, as modified by a conference of the parties to the statute, were approved by the assembly of the League and, after ratification by most of the parties, brought into force on Feb. 1, 1936.

Work of the Court.—The court held sessions every year from 1922 to 1940 and a final session in Oct. 1945. A total of 37 persons from 24 nations were members of the court at various times; among them were four Americans, although the United States was not a party to the statute and took no part in the election of judges. The eminence and reputation of the judges inspired general respect for the court and its decisions, although its advisory opinion on the Austro-German customs union in 1931 was widely suspected of having been influenced by political preferences. None of the 32 judgments of the court was ever defied by the parties, and its 27 advisory opinions, though not formally binding, were received with respect and taken into account in the settlement of the disputes or problems to which they related. The court was thus instrumental in the peaceful resolution of many international difficulties. Its decisions also served to clarify and develop international law, thus providing states with surer guidance to proper international conduct. However, the conflicts of interest which were most dangerous to the peace of the world and culminated in World War II never came before the court except the anschluss case in which by a divided vote the court denied the validity of the customs union of Austria and Germany.

Although the court was generally regarded as one of the more successful institutions of the period between World Wars I and II, the necessary changes in its constitution after World War II were technically easier to accomplish by the creation of a new International Court of Justice, since many enemy and neutral states continued to be parties to the old statute. Nevertheless, the statute of the new court is very similar to that of the Permanent Court of International Justice, on which it is expressly based.

CONSTITUTION AND ORGANIZATION

The court was originally composed of 11 judges and 4 deputy judges, but in 1930 the number of judges was increased to 15, and in 1936 the office of deputy judge was abolished. The statute provided that the court should be "a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their re-

spective countries for appointment to the highest judicial offices, or are jurists of recognized competence in international law." Only one national of any state at a time could be member of the court.

The court's expenses were borne largely by the League of Nations. The judges received regular salaries. Nine judges sufficed to make a quorum. Deputy judges, until their posts were abolished in 1936, replaced judges who were absent. The court elected its own president and vice president, appointed its own registrar and made its own rules of court regulating organization and procedure. Special chambers were formed by the court for certain types of cases, but these chambers, to which cases could be referred only at the request of the parties, remained largely unused.

Election of Judges.—The judges and deputy judges were elected for nine-year terms by concurrent majority votes of the council and the assembly of the League of Nations, and were eligible for reelection. Parties to the statute who were not members of the League could take part in the elections under a provision made in 1936. In case of deadlock, after a joint conference failed to produce agreement, the judges already elected filled the remaining vacancies by selection from among the candidates who obtained votes in the assembly or the council.

Only persons nominated by the national groups of the Permanent Court of Arbitration established by The Hague conferences of 1899 and 1907, or by groups similarly appointed by governments not represented in that court, could be candidates in the elections of the members of the court. The Permanent Court of Arbitration, which was not a standing tribunal but a panel from which arbitrators could be selected in case of need, was composed of persons "of known competency in questions of international law, of the highest moral reputation, and disposed to accept the duties of arbitrator," with each party to The Hague Convention for the Pacific Settlement of International Disputes appointing not more than four such persons. The persons so appointed by each state formed a "national group" for the purpose of nominating candidates for the Permanent Court of International Justice. This procedure was designed to minimize the effect of political motives in the selection of the judges and to ensure the nomination of suitable candidates. The statute also laid down: "At every election, the electors shall bear in mind that not only should all the persons appointed as members of the court possess the qualifications required, but the whole body also should represent the main forms of civilization and the principal legal systems of the world."

Judges Ad hoc.—If in any case before the court there was no judge from a state which was a party litigant, that state could name an additional judge to sit with the court, on a basis of equality with the other judges, in that case. For this purpose several parties in the same interest were reckoned as one party only. Such specially appointed judges were often referred to as judges *ad hoc*.

FUNCTIONS, JURISDICTION, AND PROCEDURE

The functions of the court were to hear and determine disputes submitted to it by states and to give advisory opinions at the request of the assembly or the council of the League of Nations. The statute required the court to apply in its decisions (1) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (2) international custom as evidence of a general practice accepted as law; (3) the general principles of law recognized by civilized nations; (4) judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law. The court also had the power, if the parties so agree, to decide a case *ex aequo et bono* (that is, without strict regard for legal rules), but this power was never in fact exercised. A decision of the court was formally binding only between the parties and in respect of the particular case, but the court tended to rely on its previous decisions as precedents.

Jurisdiction.—Only states or members of the League of Nations could be parties to cases before the court. Claims of private persons, therefore, could be brought before the court only by their governments. The court was open to the members of the League of Nations and to the states mentioned in the annex to the League covenant, and it was open to other states upon condition of their accepting the jurisdiction of the court and undertaking to carry out in good faith its decisions and not to resort to war against a state complying therewith.

The jurisdiction of the court comprised all cases which the parties referred to it and all matters specially provided for in treaties and conventions in force. It was based on the consent of the parties. The mere acceptance of the statute did not bind a state to submit any dispute to the court. The statute, however, contained an optional clause by adhering to which a state recognized the jurisdiction of the court as compulsory in relation to other states accepting the same obligation. A total of 45 states at one time or another adhered to this clause, but many of the adherences were for limited periods of time and restricted by various reservations. The court's jurisdiction was also extended by provisions in many treaties for the submission to the court of disputes between the parties.

Advisory opinions.—International organizations, including the League of Nations itself, had no standing to appear as parties in cases before the court, but the court was empowered to give an advisory opinion upon any dispute or question referred to it by the council or the assembly of the League. Actually, only the council requested advisory opinions. States were permitted to submit to the court written and oral statements with respect to matters on which advisory opinions were sought. International organizations notified by the court could also submit such statements. The court could refuse to give an opinion, as it did in 1923 in the Eastern Karelia case.

Procedure.—Elaborate provision was made to permit all interested states to present fully their respective contentions and the relevant evidence. The written proceedings in contentious cases consisted of the communication to the judges and to the other parties of memorials, counter memorials, and, if necessary, replies and rejoinders, with all supporting papers and documents. The oral proceedings consisted of the hearing of witnesses, experts, agents, counsel, and advocates. The hearings were public. The court was empowered to indicate any provisional measures to be taken to preserve the rights of either party pending final decision. The judgment or advisory opinion, read in open court, was given by a majority of the judges present at the hearing, and stated the reasons on which the decision or opinion was based. A judgment was final and without appeal. Dissenting judges were entitled to deliver separate opinions. The judgments and advisory opinions were printed in special series of reports, as were the pleadings and the records of the hearings. The official languages were English and French.

Extrajudicial activity.—The court or its president on several occasions complied with requests to appoint arbitrators and other persons with international functions. Although there was no provision in the statute for this activity, it was generally regarded as within the scope of the general interest served by the existence of the court.

BIBLIOGRAPHY.—H. Lauterpacht, *The Development of International Law by the Permanent Court of International Justice* (New York, London, 1934); Manley O. Hudson, *The World Court, 1921-1938: a Handbook of the Permanent Court of International Justice*, 5th ed. (Boston, 1938); *The Permanent Court of International Justice, 1920-1942*, rev. ed. (New York, 1943); annual articles in the *American Journal of International Law* (Jan. 1923-Jan. 1947); full bibliography of publications by and about the court were printed in its *Annual Reports*, Permanent Court of International Justice, *Publications*, series E, no. 1-16 (1925-47), and subsequently in the *Yearbooks of the International Court of Justice*; see also bibliography in Edvard Hambro, *The Case Law of the International Court* (Leyden, 1952).

The CHAIRMAN. Mr. Donald Jameson, president of the Equitable Securities Co. of Indianapolis, Ind.

STATEMENT OF DONALD JAMESON, PRESIDENT, EQUITABLE SECURITIES CO., INDIANAPOLIS, IND.

Mr. JAMESON. Mr. Chairman and members of the Senate Foreign Relations Committee, my name is Donald Jameson, 256 Buckingham Drive, Indianapolis, Ind. I am a Hoosier born and bred—my ancestors came to Indiana shortly after the Revolutionary War, in which they fought. I was a ward chairman, a member of the Indiana Legislature, and a city councilman.

I am testifying as a small businessman and as an individual, knowing that thousands of little people such as I am and as I know have the same views that I have on this subject.

PRESERVING SOVEREIGN RIGHTS OF UNITED STATES

The six vital words "as determined by the United States"—known as the Connally amendment, which was adopted by the Senate of the United States—preserves the sovereign rights of this Nation. It is because of these words that our Nation has reserved the right to decide which cases shall be referred to the United Nations International Court of Justice, and which cases are of a purely domestic nature. This right of the United States must be preserved.

COURT'S INTERPRETATION OF TREATIES

If the Humphrey Senate Resolution 94 is adopted, you, gentlemen, the duly elected representatives of the people, could become the pawns of the World Court which could assume your constitutional right to accept or repudiate the terms of treaties entered into by our Republic. The United Nations Charter was adopted as a treaty. It solemnly contemplates the fact that under article 6, paragraph 2, of the Constitution of the United States, "* * * all treaties made * * * shall be the Supreme Law of the land; and the judges in every state shall be bound thereby * * *." Then read article 36, 2(a) of the Statute of the United Nations Court which states unequivocally that the World Court has jurisdiction over "the interpretation of a treaty." Thus, if Senate Resolution 94 is adopted, all treaties entered into by the United States would automatically be subject to revision or rejection by the United Nations Court. With the possible exception of France, in no other nation does a treaty automatically become domestic law.

ISSUES INVOLVING THE PANAMA CANAL

Two of the fifteen judges of the United Nations Court are from Communist nations, Poland and the Soviet Union. For years the Communist bloc has been casting covetous eyes toward the Panama Canal. Recently the public press has been reporting Communist-inspired activities against the United States in Panama. Without the protection of the Connally amendment, the United Nations Court could claim our treaty with Panama is not a "domestic issue" but should be brought before the International Court of Justice. This body could declare the Panama Canal under the trusteeship of the United Nations. We would be helpless because under article 60 of the Statute of the World Court their "* * * judgment is final and without appeal." Adoption of Senate Resolution 94 would place American treaties under international United Nations dictatorship.

GENOCIDE CONVENTION

Not only could treaties come under the scrutiny and jurisdiction of this United Nations Court, but individual Americans could be charged before the World Court. The Genocide Convention was signed by the United States and came into force as a treaty of the United Nations on January 12, 1951, after 20 states had ratified or acceded.

Under the Genocide Treaty article II, (b), "Causing serious bodily or mental harm to members of a group" makes one guilty of genocide. Suppose an eminent Senator makes statements against the brutality of Communist conquest such as the slave labor camps, the rape of Hungary, and the atrocity killing of Chinese nationals. A Communist, as a member "of a group" could charge that Senator with causing him mental harm and have him tried before the World Court. There is no right of trial by jury as designated in the Constitution of the United States. The reporter who wrote the Senator's statements would also be subject to trial for having contributed to the "mental harm" because under article III—

The following acts shall be punishable: * * *

(c) Complicity in genocide.

Article IV of the Genocide Treaty states:

Persons committing genocide or any of the other acts enumerated in article III shall be punished, whether they are constitutionally responsible rulers, public officials or private individual.

DECLARATION OF HUMAN RIGHTS

Dr. Charles Malik of Lebanon, former Chairman of the Human Rights Commission of the United Nations, has warned of the Communist domination of this Commission. The United States has endorsed the Declaration of Human Rights of the United Nations. Article 21 of this document, adopted as principle by member countries in December 1948, states that "Everyone has the right to take part in the government of his country * * *." But subversive screening is necessary for certain Government positions in the United States. A subversive could appeal to the World Court and demand that, since the United States has endorsed the Human Rights Declaration, he should be permitted to "take part in the Government."

Under article 14(1) of this Declaration of Human Rights, "Everyone has the right to seek and to enjoy in other countries asylum from persecution." Our immigration law has subversive screening which could be declared illegal by the World Court. In fact the World Court could scrap our entire immigration law and order the United States to accept the hundreds of thousands of refugees who are clamoring for entrance to this country. Think what this would do to labor market.

Everywhere we read or hear of "population explosion" and this Nation must protect herself from the unemployment which would sweep the country if the International Court should decide to assume authority over immigration.

OPPOSITION TO SENATE RESOLUTION 94

What can this great country of ours gain and what can the free world gain by the removal of the Connally amendment?

The six words that protect us—"as determined by the United States"—must stand.

The people that I represent—the little people that are attending to their jobs, raising their families, and paying their monthly bills—beseech you to vote "No" to Senate Resolution 94.

Thank you.

Senator HICKENLOOPER (presiding). Well, thank you, Mr. Jameson, for your statement.

I think, perhaps, you may want to reconsider one statement you have made when you referred to the Genocide Treaty. It is in the second paragraph on page 2, the middle of the page, where you say that the Genocide Convention was signed by the United States and came into force as a treaty of the United Nations—I beg your pardon, I misread it as saying a treaty of the United States. We have not ratified that as a treaty.

Mr. JAMESON. Yes; treaty of the United Nations.

Senator HICKENLOOPER. I am sorry; I misread that.

Thank you very much.

Mr. JAMESON. Thank you.

Senator HICKENLOOPER. Mr. Merwin K. Hart, president of the National Economic Council of New York City.

Be seated, Mr. Hart, please.

STATEMENT OF MERWIN K. HART, PRESIDENT, NATIONAL ECONOMIC COUNCIL, NEW YORK CITY

Mr. HART. My name is Merwin K. Hart. I am president of the National Economic Council, with members in all States, a membership corporation organized under the laws of the State of New York.

We have been coming down here, Mr. Chairman, for some 30 years on some of these matters.

The kernel of the pending Senate Resolution 94 is the proposal to remove the words "as determined by the United States" from Senate Resolution 196 of the 79th Congress, 2d session.

REASONS FOR RETAINING RESERVATION

If there was reason for inserting those words, "as determined by the United States" in the resolution of August 2, 1946, there is even more reason for keeping them there now in 1960.

For America is far weaker today vis-a-vis Soviet Russia than she was then.

The greatest problem before America today is not "peace" or "peace with justice" or "a just and lasting peace," about which we hear so much these days, and all of which are important.

The greatest problem before America today is just plain survival—the continued independence of the American Republic and the continued liberty of her people.

These two are gravely threatened by this pending resolution. Passage of Senate Resolution 94 could lead gradually to abdication by the United States of its sovereign power and that of the American people to a world government. It is my belief that that has long been the objective of our enthusiastic but deluded "one worlders."

EFFECT OF ADDITIONAL UNITED NATIONS MEMBERS

What influence would the United States have with its 1 vote out of 15 in the World Court—the International Court of Justice?

There are today 82 member countries of the United Nations, with which the International Court of Justice is closely affiliated and by

which it is controlled. There are four or five likely new members of the United Nations in 1960. The year 1961 is likely to bring in Cyprus, Rhodesia, Nyasaland, Tanganyika, Uganda, and the Belgian Congo, or most of them.

It is well known that for years Soviet Russia and communism generally have been stirring up trouble in all parts of Africa; and these new nations that are appearing so rapidly are, without doubt, just as have been planned by world communism.

Among certain Americans the appearance of a new African independent nation is ground for satisfaction. But there is little question that this great new addition to the family of nations is designed by world communism to give Soviet Russia presently a clear majority or more in the General Assembly of the United Nations.

It would be mere folly for this great American Republic to put itself into the hands of the 80 or 90 or 100 other nations that constitute, or will shortly constitute, the United Nations. Most of these other nations are small in population, unimportant economically, and many of them backward in the extreme. Yet the vote of each will be just as effective as that of the United States in the U.N.; and America will have but a single vote in the World Court while Soviet Russia, together with Poland, will have two.

Of course these nations will be eager to join the United Nations and be subject to the International Court. They have little to lose. But the people of the United States have everything to lose.

MAN'S BEST HOPE FOR A PEACEFUL WORLD

I have carefully read the address of Mr. Charles H. Rhyne, chairman of the committee on world peace through law of the American Bar Association, which was inserted in the record by Senator Humphrey at the same time that he inserted a draft of Senate Resolution 94, on May 24, 1959. Mr. Rhyne said in this address:

Though never envisioned as the absolute tranquillizer for all world frictions, the United Nations still is man's best existing hope for a peaceful world.

I deny absolutely, Mr. Chairman, that the United Nations is or ever has been "man's best existing hope for a peaceful world."

To note a single action by the United Nations which has stirred up no end of trouble for the United States and other nations, I would mention the action taken to partition Palestine, which was jammed through the General Assembly of the United Nations in late November 1947.

It is clear to me that man's best existing hope for a peaceful world is not the United Nations, but a continued strong, independent United States of America. Certainly the continuance of that independence is the best existing hope of loyal Americans for a peaceful world.

Mr. Rhyne in his address lays great stress on the fact that the International Court of Justice has little to do at present. His argument seems to be that the United States should jeopardize its own sovereignty in order to give this Court of 15 judges more to do.

SENATE ACTION ON SENATE RESOLUTION 94

Anyway, what's the hurry about pushing this resolution through the Senate? Why is only a single afternoon made available, on short

notice, for American citizens to express their views on the subject? Would any vital American interest suffer if this matter were put over for a year—or put on ice for an indefinite time?

There are highly organized groups in the United States that seem infatuated with the idea that the United States has only to enmesh itself and its interests with those of other nations in order to insure a just peace.

But our involvement in the Korean war is alone enough to refute this notion. Due to the brilliance of General MacArthur and one or more of his successors in command in Korea, that war would have been won—in fact, was to all intents and purposes won. Yet we were compelled by our tie-in with other nations to refrain from winning the war. And so we lost it.

I firmly believe that this resolution should be defeated.

Senator HICKENLOOPER. Thank you, Mr. Hart, for your statement.

I want to refer to only one paragraph on page 4 in which you object to what you believe to be the short notice and precipitate nature of this hearing.

This resolution, I believe, was filed last year. It has been the subject of considerable discussion over the country.

As everyone knows, for various reasons, this session of the Congress is going to be somewhat compressed. There are a couple of conventions that are going to be held in July that will probably have an effect on adjournment time; I am not sure. But anyway, notice was given, I believe, on the 21st of January—but I will check that date—that these hearings would be held, and up until, I believe, today or yesterday at the latest, every person, organization, or group that had desired to be heard was put on the list to be heard.

I believe six or seven requests more have come in, either last night or today, requesting to be heard.

I cannot speak for the chairman; I cannot commit the committee. The attendance here at this particular moment precludes any polling of the committee, so I am not authorized to make any commitments, but I have no doubt that within all reasonable limits any appropriate or proper people or groups who have views to present on this will be permitted to present those views.

I am sure that I do speak for the chairman and for the committee when I say that we, regardless of our personal opinions on this matter one way or the other, have no desire to compress this hearing nor to rush through unduly in any way, shape, or form.

I merely say that in defense of the committee procedure, and I would not want you to misinterpret the action of the committee on this matter.

We hope to have as adequate hearings as the circumstances will permit.

Mr. HART. Then, Mr. Chairman, thank you very much for that. I would simply suggest that owing to the importance of the subject, the overwhelming importance, and owing to the fact, as you just said, that this year's calendar is going to be very tight, the whole matter should go over at least a year for further hearings then.

Senator HICKENLOOPER. Yes, I understand your position.

May I just correct my statement of a moment ago? A public press release and publicity on the hearing was not put out on January 21;

it was put out on the 15th of January, so I merely want to make that correction for the record.

Mr. HART. Thank you.

The CHAIRMAN. Thank you, Mr. Hart.

The next witness is Mr. Harold Evans, Friends Committee on National Legislation.

STATEMENT OF HAROLD EVANS, FRIENDS COMMITTEE ON NATIONAL LEGISLATION

Mr. EVANS. Mr. Chairman and Senator Hickenlooper, my name is Harold Evans, and I apologize for my voice, but I cannot help it.

I live in Philadelphia where I have practiced law for nearly 50 years. I am a member of the Religious Society of Friends (Quakers) but neither I nor anyone else can speak officially for them as a group. I feel confident, however, that the great majority of them strongly support Senate Resolution 94.

NEED FOR INTERNATIONAL COURT TO SETTLE DISPUTES

Men today are united, I believe, as never before in a well nigh universal desire to abolish war. But if war is to be abolished, international disputes that cannot be settled by negotiations or arbitration must be settled by law. And if they are to be settled by law there must be one or more courts with compulsory jurisdiction to settle international disputes, the resolution of which depends upon facts and the application of principles of law.

The International Court of Justice is such a Court. Thirty-two nations have without reservation accepted its compulsory jurisdiction in disputes involving the interpretation of a treaty, in questions of international law, the existence of a breach of an international obligation, or the reparation to be made for such a breach, unless some other means of settlement has been agreed to by all the parties or unless the dispute involves a matter essentially within the domestic jurisdiction of a party. Six other nations, including the United States, have accepted compulsory jurisdiction but each, following the example of the United States in 1946, has provided that it may unilaterally determine whether a dispute is within its domestic jurisdiction. France originally had a similar self-judging domestic jurisdiction reservation, and because of this fact its suit against Norway (which had no similar reservation) was thrown out on Norway's statement that the matter was within its domestic jurisdiction. France subsequently withdrew its self-judging domestic jurisdiction reservation. It has withdrawn it probably largely due to its experience with Norway with its dispute on the Norwegian loans.

RESERVATION AS A BLOCK TO SUCCESSFUL FUNCTIONING OF COURT

Now, I think it cannot reasonably be gainsaid that our action in writing into our acceptance resolution of August 2, 1946, the words "as determined by the United States" have been an effective block to the successful functioning of the International Court. In any national judicial system it would be unthinkable for a defendant to have the right to determine whether the court had jurisdiction of an action

brought against him. To do so in the field of international disputes casts serious doubt in the minds of others as to the sincerity of our advocacy of the rules of law in the world.

The record of the United States during this century in the field of the peaceful settlement of international disputes has been one of strong and effective leadership in promoting agencies to this end—the Permanent Court of Arbitration, the Permanent Court of International Justice, and the International Court of Justice—but a deadening lack of faith in supporting them, after they have been created, and in trusting important issues to their decision. These courts could not function effectively without our active backing and we have failed them.

BELIEF IN RIGHT RATHER THAN MIGHT

For us, even at this late date, to withdraw the crippling self-judging reservation would help remove the doubt that uncommitted nations have had as to the sincerity of our advocacy of the rule of law in the world. Our willingness to agree in advance to submit our international disputes to the decision of an impartial court is an acid test of our professed belief in right rather than in might. Of the 10 nations in ~~NATO~~ the United States is the only one which denies the International Court the right to determine its own jurisdiction. I believe it is high time that we rid ourselves of this unenviable distinction.

I have read with interest the reports you have received from the Department of State and the Department of Justice favoring Senate Resolution 94 and heartily agree with them. There is no need of my reiterating their arguments.

DANGER OF INACTION

If there are some who feel that danger is involved I would agree with them, but I am convinced that the danger of inaction is far greater than the danger of action. The danger of giving the International Court of Justice the right to determine its own jurisdiction is merely that it may erroneously decide that it has jurisdiction to pass on questions that are essentially domestic. The decisions of the Court and the character of its judges show, it seems to me, how small this danger is compared with the danger of losing the confidence of the free nations of the world that we are wholeheartedly supporting in international affairs the rule of law which was long ago defined by Aristotle as "intelligence without passion."

REQUIREMENT OF FAITH

Now, Senator Hickenlooper says it requires faith, and I would agree with him that it does require some faith, but I think in looking at the history of the world we find that progress has nearly always come from faith which has been exercised on a reasonable basis.

Certainly in the founding of our own country it was true, and it seems to me that in the field of international relations today, unless there can be some faith, there is little chance of further progress.

I thank you.

The CHAIRMAN. Thank you very much, Mr. Evans.

Mr. EVANS. Thank you, sir.

The CHAIRMAN. The next witness is Mrs. Wilson K. Barnes, the national chairman of the national defense committee, the National Society of Daughters of the American Revolution.

Mrs. Barnes, we are glad to have you.

STATEMENT OF MRS. WILSON KING BARNES, CHAIRMAN, NATIONAL DEFENSE COMMITTEE, NATIONAL SOCIETY, DAUGHTERS OF THE AMERICAN REVOLUTION

Mrs. BARNES. Thank you for the privilege of allowing me to present the statement of the National Society, Daughters of the American Revolution, concerning Senate Resolution 94, to the distinguished members of the Senate Foreign Relations Committee.

I am Mrs. Wilson King Barnes, chairman of the national defense committee, National Society, Daughters of the American Revolution.

Senator Humphrey, in his bill—Senate Resolution 94—has proposed to our Congress that the Connally amendment to the Statute of the International Court of Justice be repealed. This amendment reserved to the United States the right to determine unilaterally whether a subject of litigation lies essentially within domestic jurisdiction. Senator Humphrey's bill would eliminate this automatic reservation from our declaration accepting compulsory jurisdiction of the Court.

The reasons for our opposition to the repeal of the Connally amendment are as follows:

CONFERRING POWERS TO DETERMINE JURISDICTION

It would indeed be ironical for this Nation to confer upon a foreign body the power to determine its judicial jurisdiction which no court in the United States, Federal or State, has been given. In the United States, all courts have their jurisdictions conferred by either a written constitution or a statute passed by the legislative branch of the Government. American courts determine their own jurisdiction only in the context of a definitive body of constitutional and statutory law. If the determination of jurisdiction is an usurpation of power, the legislative branch of the Federal or State Government may readily eliminate the usurpation. There is no definitive body of international law other than in the maritime field of jurisprudence, and the United Nations Charter does not purport to limit in any definitive manner the distinction between international and domestic areas of decision.

BLENDING SOCIOLOGICAL AND POLITICAL CONCEPTS WITH JUDICIAL DECISIONS

The United States during the last 25 years has experienced decisions of the Supreme Court of the United States in which there has been a trend of blending sociological and political concepts with judicial decisions. This demonstrates the inherent danger in entrusting to the World Court the power to define its own jurisdiction. The Supreme Court, composed of jurists trained in the same legal tradition, limited by the written Constitution and municipal law, has extended its jurisdiction into political and sociological areas. It is reasonable to believe

that the International Court of Justice with no definitive body of law, no prior tradition of judicial restraint, and with judges trained in different legal systems, and without agreement among themselves as to either the principles of law to be applied or the methods of applying the law would fail to decide cases upon a political and ideological rather than upon a strictly judicial basis.

COVENANT OF HUMAN RIGHTS

The jurisdiction of the Court comprises all cases which the parties refer to it, and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force. Should the United States subscribe to the Covenant of Human Rights, its citizens would find there is no guarantee to the ownership of private property and that the concepts of inalienable rights derived from our Creator have been changed to that of the State as their author; furthermore that those rights are not absolute but exist only so long as they do not threaten national security.

GENOCIDE CONVENTION

Although the International Court is supposed to try only cases between nations, the Genocide Convention permits trial of individuals who by an act or word cause serious mental harm or inflict conditions of life bringing about destruction in whole or in part of national, ethnical, or racial groups. Thus a citizen of the United States, should this country adhere to the Genocide Convention, might be tried and sentenced by the International Court.

DETERMINING DOMESTIC JURISDICTION

The United States is apparently the only Federal Union member of the United Nations, in which the Central Government has one group of powers while all others are lodged in the several States. All State powers and all Federal powers would seem to be essentially within the domestic jurisdiction of this country, but whether the International Court of Justice, composed of members whose ideologies and system of laws are foreign to the common law and constitutional law of this country, would so decide is problematical. To the Soviet Union, the basis of our law is called bourgeois morality and even among nations friendly to the United States, there are differences as to principles of law.

The States as the only parties capable of amending our Constitution might find themselves shorn of that power, as well as their other governmental powers, if we should waive our present right of unilateral decision.

IMMUNITY TO CONSTITUTION AND SUPREMACY OVER DOMESTIC LAW

At present a dispute between the United States and another nation can be settled by the World Court if both nations agree for it to be decided. A blanket submission to International Court jurisdiction would put the same tool for nullifying our Federal and State constitutions in the hands of forces outside the United States as would the use

of the treaty power to supersede domestic law. This immunity to the Constitution and supremacy over domestic law is extended to rulings of the International Court when the United States submits to its jurisdiction under treaty.

COMMUNIST JUDGES

Sitting with the International Court of Justice are judges from Communist-dominated countries. Everything that serves the interest of the Communist party is legal. Therefore, a non-Communist state which is a party to a case before this Court cannot expect an unbiased judgment. Communist judges in accordance with party policy directive could be counted upon to propagate Communist aims and purposes in reaching decisions of the Court.

FEW, IF ANY, RECOGNIZED PRINCIPLES OF INTERNATIONAL LAW

With the exception of certain kinds of maritime matters in which there are fairly well-established rules of international law, there are few, if any, settled and universally recognized rules or principles of international law. In respect to such matters as the limitation of actions, national sovereignty, or governmental structure, the International Court is free to apply any rule or principle developed by a majority of the judges, some of whom might be motivated by national interest or actual hostility. In the United States, the Government is one of laws, not men. Where the law is vague, obscure, or nebulous, as is the situation with the International Court, it could be applied authoritatively to transform the Government of the United States into one of men, not law.

DIFFERENT SYSTEMS OF LAW

Very few of the nations in the United Nations have our system of common law; fewer still believe in the natural rights of man. In this country, the American Bill of Rights guarantees the rights to freedom of religion, of speech, of the press, of habeas corpus, of trial by jury; that no one shall be deprived of his life, liberty, or property without due process of law. The framers of our Constitution and Bill of Rights believed these rights came from God, a belief that stems from our religious heritage and forms the bulwark of our liberties.

There are differences, too, between systems of law as to the presumption of innocence, of the right to appeal, and of the minority against the general will. With a dictatorship such as exists in the Soviet Union, where the individual exists for and at the mercy of the state, there is little common ground in legal fundamentals.

ENFORCEMENT OF COURT'S JUDGMENTS

Judgments of the International Court may be enforced by measures provided for in articles 41-48 of the United Nations Charter, including interruption of economic relations, severance of diplomatic relations, or armed force. It would be tragic if the slogan "World Peace Through World Law" should require this country to decide whether to submit to a decision adverse to our national security, or to resort to arbitrament by armed force.

COURT HEARINGS

Article 46 of the statute of the International Court of Justice provides that the hearing in Court shall be public unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted. Our English ancestors fought successfully against the power of the British judges to conduct star chamber proceedings where trials were held in secret and those prosecuted were all but defenseless against the power of the British Crown. No American, mindful of the dangers inherent in secret trials would consent to such a procedure as made possible in this article 46.

PRESERVING OUR LIBERTIES

Americans have a sacred mission stemming from our inheritance of the blessings of freedom to see that the liberties won by our ancestors shall be preserved to mankind. The rule of constitutional law so hardly won must not be sacrificed by a surrender to world domination brought about by a Court whose members know little or nothing of true freedom or inalienable rights. Lack of confidence in a Court where such foreign ideologies exist does not show a loss of faith in the judicial process, since the premise is lacking that an impartial decision would be based on law and not on sociological or ideological reasons. A Court whose jurisdiction depends on the national interest or hostility of its individual members cannot add much to the law.

DESTRUCTION OF SOVEREIGNTY

The idea has been advanced that the Connally amendment should be repealed, since the United States can expect because of its large foreign interests to be plaintiff frequently before the Court and stands to suffer because the only other party to the case can invoke a veto power similar to our Connally amendment. I hold that this country will suffer more if the amendment is repealed, for its sovereignty will be destroyed through permitting a World Court whose jurisdiction cannot be externally determined to decide what is and what is not a domestic issue.

LACK OF FAITH IN COURT'S CAPACITY

The fact that the World Court has had in 14 years only 17 contentious cases and 10 advisory opinions shows the lack of faith in its capacity. Mexico, the Union of South Africa, India, Pakistan, and the Sudan have reservations similar to the United States, and the United Kingdom excludes disputes affecting the national security of the United Kingdom.

This country would do a great disservice to the world if it encouraged other nations to submit to a Court which has no definitive body of law and some of whose members have no belief in moral principles.

QUESTION OF SPECIFIC RESERVATIONS AS TO DOMESTIC MATTERS

Some have suggested that this country should make certain specific reservations as to domestic matters such as our tariffs, immigration, the Panama Canal, etc. Such reservations are unnecessary if we

retain the Connally amendment which takes good care to protect us in these and other domestic affairs and is a vital safeguard against any weakening of our constitutional guarantee.

SUPERIMPOSING A JUDICIAL DICTATORSHIP

Internationalists would superimpose upon this Nation a judicial dictatorship which would rob our Chief Executive of his time-honored authority, deprive the Supreme Court of its prerogatives and dispossess the Senate of its actual power. Let us preserve our Republic and the fruits of the great American Revolution against the forces of reaction which would cause a return to a tyrannical form of government.

The CHAIRMAN. Thank you very much, Mrs. Barnes.

RESOLUTION ADOPTED BY D.A.R.

(The attachment to Mrs. Barnes' statement follows:)

Included with this statement is a copy of the resolution on World Court adopted by the 68th Continental Congress, National Society, Daughters of the American Revolution, April 1959, in which the national society requested the Congress of the United States to preserve the existing safeguards against intervention by the World Court in the domestic affairs of this nation.

"Whereas the limited jurisdiction now accorded the International Court of Justice involves the sovereignty of this Nation, and underscores the continuing need for a constitutional amendment to protect us from the dangers of treaty law; and

"Whereas the jurisdiction of the International Court of Justice was accepted by the United States of America in 1946 with the provision that the authority of the Court be limited to international disputes, and that the United States reserve the right to decide whether or not cases involving this country are domestic or international; and

"Whereas the reserved power to settle domestic issues without World Court interference is a shield against provisions contained in such international conventions as the Declaration of Human Rights and the Genocide Convention, which infringe upon the rights of U.S. citizens:

"Resolved, That the National Society, Daughters of the American Revolution, request the Congress of the United States to preserve the existing safeguards against intervention by the World Court in the domestic affairs of this Nation, and to support the principles of the original Bricker amendment."

The CHAIRMAN. I believe Mr. Fellers is not here today. He is submitting a statement; is that correct?

The next witness will be Elizabeth S. Cowles, legislative chairman of the Republican Committee of One Hundred of New York City and the chairman of national defense, New York City Colony of New England Women.

We are glad to have you.

STATEMENT OF ELIZABETH S. COWLES, LEGISLATIVE CHAIRMAN, REPUBLICAN COMMITTEE OF ONE HUNDRED, NEW YORK CITY, AND CHAIRMAN, NATIONAL DEFENSE, NEW YORK CITY COLONY OF NEW ENGLAND WOMEN

Mrs. COWLES. Mr. Chairman, thank you very much for letting me come and speak for two organizations today, and before I start my statement may I say that we want the entire statement put in the record. Despite the fact that there have been quotes similar to mine or

exactly like mine repeated here before today, these quotes happen to impress my membership; therefore, we do want them included and not deleted.

I am Elizabeth Sherman Cowles of New York City. I am appearing before the Senate Committee on Foreign Relations on behalf of the legislative committee of the Republican Committee of One Hundred of New York City, and the New York City Colony of New England Women.

PROJECTION INTO INTERNATIONAL AFFAIRS

When the Connally reservation was approved by the U.S. Senate in 1946, the vote was 51 in favor and 12 opposed. Now, nearly 15 years later, it appears that the question of eliminating the reservation may again be submitted to the Senate. It would seem ironical that a reservation of power in the United States to determine what matters are essentially domestic and not subject to jurisdiction of the World Court that was approved at a time prior to the projection of the United States into international affairs, which has been revealed particularly during the last dozen years, should now be brought into question. The Senators in 1946 had no evident cause to believe that there could be any real difficulty in distinguishing between international and domestic matters. The vote on the entry into the United Nations clearly indicates that the Senate had no misgivings as to the danger of surrender of sovereignty to an international organization. They and most of the legal authorities of the country relied implicitly on the express assurances contained in the United Nations Charter and the Statute of the World Court that no intrusion into domestic affairs was contemplated.

FAINT LINE OF DEMARCATION BETWEEN FOREIGN AND DOMESTIC AFFAIRS

Now after 15 years the American Nation has become so enmeshed into the international orbit that the line of demarcation between foreign and domestic affairs is so faint as to have virtually disappeared. The situation can be summed up by reciting a statement made and widely publicized by the State Department in 1950, namely:

There is no longer any real distinction between "domestic" and "foreign" affairs (Department of State Publication 3972, Senate Foreign Policy Series No. 28, released September 1950).

Perhaps the Senators may feel that the State Department pronouncement should be construed somewhat less than literally, but how can the Senators predict what the members of this World Court, only one of whom will be an American, will choose to evaluate any official declaration of the State Department of the United States? In addition to this pronouncement there are other instances of statements of similar import emanating from places of high authority in the American administration.

The President of the United States at St. John's College in Annapolis, Md., on May 22, 1959, stated:

How meaningful for us—these words delivered nearly a quarter century ago. For us, indeed, there are no longer "foreign affairs" and "foreign policy." Since such affairs belong to and affect the entire world, they are essentially local affairs for every nation, including our own.

If the President of the United States of America feels that the distinction between foreign and domestic matters no longer exists, how can we possibly ask the U.S. Senate to endow this World Court with unrestricted power over all the affairs of the United States which in the opinion of the World Court—an opinion above any possibility of appeal on any basis whatsoever—are not essentially our Nation's domestic affairs?

What is the objective of the administration which causes it to place our American Nation into a position where an alien tribunal will have the power to adjudicate finally in accordance with its own principles and precepts—which for the most part will be entirely contrary to those of United States of America—such matters as have been regarded as traditionally domestic, as, for instance, immigration, tariffs, Panama Canal?

STATEMENTS MADE BY VICE PRESIDENT NIXON

There are many attractive slogans currently circulating such as "World Peace Through Law" which may be motivating the White House. Will the elimination of the Connally reservation contribute to this end? Would it not be fatuous for the U.S. Senate to believe that the threat of war—presented by that formidable enemy against which Americans are expending \$40 billion a year—can be in the slightest degree reduced through the mechanism of any international judicial tribunal? Let me give you the answer to the question from the lips of the Vice President of the United States of America. On October 5, 1959, at Chicago, Ill., the Vice President made the following statement:

If we rule out, as we have and should, the use of force or threats of force as a means of settling differences where negotiations reach an impasse, the sole alternative is the establishment of the rule of law in international affairs.

There are some who suggest that the only answer is that nations should agree to submit all their disagreements to some new, all-powerful world tribunal. However well intended such proposals may be, they are completely unrealistic in the present world context. As the distinguished Washington correspondent of the New York Times, Mr. Arthur Krock, said to me recently: "Great powers will submit details to arbitration but never their basic interests."

But the fact that the obstacles to establishing a rule of law among nations are formidable is no reason for wringing our hands in despair and doing nothing.

DANGERS OF SENATE RESOLUTION 94

In all the time I have been working with the members of the organization for which I am now speaking, I have never encountered such deep concern with any issue such as that evidenced with reference to this proposed action to destroy the Connally reservation. My associates are not attorneys and I think it may be instructive to know that from the objective basis of commonsense—would I be permitted to say by woman's intuition?—we all unanimously fear the perilous consequences which we feel almost certainly will follow upon this misguided move. We believe that a nation which has been propelled into virtual insolvency by leaders anxious to bring aid to all of the world outside of our own country not excluding—may God forgive us—in some instances of our own enemies, best now pause before gambling

with the fate of our independent American Nation by plunging into the incredibly powerful authority of an alien World Court.

Our Nation cannot possibly benefit the rest of the world by abandoning its independence and sovereignty any more than it can by destroying its financial and economic prowess. On behalf of myself and my associates I wish to urge this committee and the Senate of the United States to reject the Humphrey resolution and any similar efforts aimed at enhancing the powers of this World Court over American affairs.

Also, we wish to reiterate our request that this hearing be continued until all those who wish to testify are heard.

In conjunction with that, I have signed this as legislative chairman of the Republican Committee of One Hundred of New York City, and this is a statement of the New York City Colony of New England Women, which says:

We heartily concur with the statement made by the legislative committee of the Republican Committee of One Hundred of New York City. We respectfully submit our agreement through our chairman on national defense, Elizabeth S. Cowles.

The CHAIRMAN. Thank you very much, Mrs. Cowles.

Mrs. COWLES. Yes.

The CHAIRMAN. That will be all the witnesses today.

We have a few more witnesses who have applied to be heard who will be provided a time to be announced at a later time by the committee.

At the moment we have a full schedule. It will probably be a week or 10 days before we can get an opportunity for one more hearing.

I think that—well, I know we can dispose of all those who have applied for an opportunity to be heard in one more session.

The committee is adjourned.

(Whereupon the committee adjourned at 5:10 p.m., to reconvene at the call of the Chair.)

COMPULSORY JURISDICTION, INTERNATIONAL COURT OF JUSTICE

WEDNESDAY, FEBRUARY 17, 1960

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The committee met, pursuant to call, at 10:05 a.m., in the committee room, room 4221, New Senate Office Building, Senator J. W. Fulbright (chairman) presiding.

Present: Senators Fulbright (presiding), Green, Humphrey, Church, Hickenlooper, Aiken, Carlson, and Williams.

The CHAIRMAN. The committee will come to order. The committee is meeting today to consider further Senate Resolution 94 which would delete the so-called Connally amendment from the 1946 resolution authorizing U.S. acceptance of the compulsory jurisdiction provisions (art. 36, par. 2) of the Statute of the International Court of Justice under certain conditions.

At the conclusion of the January 27 hearings I indicated that an additional hearing would be held in order that the committee might receive the testimony of those persons who had asked to be heard on the 27th but could not be scheduled because of a full agenda for that date.

I do not anticipate that it will be possible for the committee to hold any further public hearings on this resolution this session. The record, however, will be kept open for 10 days to receive relevant statements of reasonable length. In notifying witnesses of the committee's agreement to receive their testimony, we have asked that oral presentations be limited to 10 minutes each, so members of the committee will be able to question witnesses should they so wish.

Additional material of reasonable extent will, of course, be considered for inclusion in the record at the request of witnesses, and will thus be available to Senators desiring to examine the full record.

A number of statements have been received for inclusion in the record and they will be so included. It will not be possible, however, to include hundreds of repetitive telegrams in opposition to repeal of the Connally amendment. They are the product of an organized campaign and I believe the expense of printing them is unjustified in view of the fact that the committee has a summary of the mail that it has received.

LETTER FROM FORMER SENATOR TOM CONNALLY

Senator Connally has written me a letter and I shall ask that it be inserted in the record at this point.
(The letter referred to follows:)

WASHINGTON, D.C., *February 16, 1960.*

HON. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR SENATOR FULBRIGHT: My position on the so-called Connally reservation has in no way changed since I originally advocated its adoption. You may remember that at that time I said in part:

"The United States is the object of envy of many nations of the world and many peoples. Our Treasury is most attractive to them. Immigration to our shores is something they dream of. I do not favor and I shall not vote to make it possible for the International Court of Justice to decide whether a question of immigration to our shores is a domestic question or an international question. It is a domestic question, of course; but the Court might contend it is international in character. * * *

"Mr. President, do we wish to submit to the International Court the question whether we have a right to levy tariffs and duties and to regulate matters of that kind? They are purely domestic questions, and I do not propose to have the International Court have jurisdiction over them.

"Do we want the International Court of Justice to render judgment in a case involving the navigation of the Panama Canal? The Court might say, 'It is an international stream, like the Dardanelles, * * * and problems relative to it are international problems.' Such problems are not international" (vol. 92, Congressional Record, p. 10695).

I believe that the repeal of the amendment which reserves to the United States of America the sovereign right to determine what matters are essentially within the domestic jurisdiction of the United States would be most unwise. And I am far from alone in this belief. The Texas Bar Association and many other professional organizations and patriotic societies have written to assure me that they remain very strongly opposed to repeal.

I wish also to express my deep regrets that a matter of such serious importance as the so-called Connally reservation is being treated as a propaganda device in an attempt to win an international popularity contest.

I should appreciate your reading this letter to the members of your committee at the public hearing you are having on Senate Resolution 94, February 17, 1960, and making it part of the published record.

Sincerely,

TOM CONNALLY.

SPEECH OF VICE PRESIDENT NIXON

The CHAIRMAN. During the hearing on January 27, there was some discussion of a speech which the Vice President made at the University of Chicago Law School on October 5, 1959. Various excerpts from that speech appear in the record of the hearing. It seems to me that it might be helpful if the speech in its entirety would appear in the record. Therefore, I wish to insert it at this point in the proceedings.

(The speech referred to follows:)

DEDICATORY ADDRESS BY THE VICE PRESIDENT OF THE UNITED STATES AT THE OPENING OF THE NEW LAW BUILDING, THE UNIVERSITY OF CHICAGO LAW SCHOOL

I am sure everyone in this audience will understand what a challenging assignment it is to prepare remarks which will do justice to such a historic occasion as this one—the dedication of the magnificent new buildings for the law school of one of the world's greatest universities.

And this is particularly the case when one considers the standards which have been established by those who have previously participated in events associated with the history of this institution. Your first law building was

dedicated in 1903 by President Theodore Roosevelt. And, a year and a half ago, you were honored by the presence of both the Chief Justice of the United States and the Lord Chancellor of Great Britain at the cornerstone ceremonies of the buildings we dedicate today.

As one whose daily contact with the classic literature of the common law came to an end 20 years ago, I can assure you that any temptation I might have had to speak on technical aspects of the law was quickly dissipated after I had the opportunity to note the high standards which they had set and which I could not hope to approach.

With your permission, therefore, I would like to relate this occasion to another historical event—the recently concluded visit of Mr. Khrushchev to the United States. I recognize that it would seem at first glance to be difficult to find any relationship between the dedication of this great center of legal education and his visit. But on closer examination I believe the parallel will be clear for everyone to see.

Let us begin by evaluating the Khrushchev visit in general.

I realize that there are those who understandably might ask for a direct answer to the simple question: Was the visit a success or failure? It is, of course, too early to give a conclusive answer to this question, because the success of this visit will be determined not by what was said and done while he was here but by what happens in the days and months ahead.

Only future events will determine whether this visit marks a new and hopeful turning in international affairs which will eventually produce a more stable world or whether, as some fear, the end result will be to provide a more stable base from which those who direct the world Communist movement can more effectively conduct their operations.

I am sure that most unbiased observers, however, will now agree that the President's decision to initiate this exchange of visits was a wise one.

Apart from any other beneficial results which may flow from the visit, it provided the opportunity for the President to open the way to peaceful negotiations of our differences on Berlin by gaining Mr. Khrushchev's agreement to remove the time limit on such negotiations and, thereby, to withdraw the ultimatum which his threat of unilateral action so directly implied. It is doubtful if anything short of face-to-face talks could have produced such an agreement.

Apart from this notable achievement, the visit served two other purposes which could contribute significantly to the cause of peace with honor which we all want. Putting it in simple terms, Mr. Khrushchev had the opportunity to learn more about the United States, and the American people in turn were able to learn more about him.

There can be reasonable differences of opinion as to what was the most important thing Mr. Khrushchev may have learned while he was here. It is my view that nothing was more important than for him to observe the will and purpose which unifies the American people in their dedication to the preservation of our way of life.

When he said that he could see no difference between our two parties, he was certainly correct on one score. The overwhelming majority of both the members and leaders of the Republican and Democratic Parties are united behind the President of the United States in his firm stand against any action which might jeopardize the right of the people of Berlin, or, for that matter any other people in the world, to choose and retain the kind of government they want.

And, in this connection, I am sure that Mr. Khrushchev could not have helped but have been impressed by the fact that there were no more articulate and uncompromising opponents of communism in this country than the leaders of free trade unions who were elected to the offices they hold by the very workers to whom communism is supposed to have its greatest appeal.

It was also fortunate, in my opinion, for millions of Americans to get a first-hand look at this vigorous, tough-minded, resourceful advocate of communism. There was never any danger that he would somehow work a mass conversion. The danger was that the American people might not realize how implacable and determined was the man who says and believes that communism represents "the wave of the future."

I recall in my discussion with him in Moscow that he said, "You, Mr. Vice President, are a lawyer for capitalism, and I am a lawyer for communism; and, even though I have no legal training, I don't intend to let down the workers

whom I represent." As lawyers, I think we would have to concede that no one could have been more relentless in presenting what we believe to be a bad case.

He left no doubt whatever of the massiveness and seriousness of his challenge to our way of life, because, while he now rules out the use of force as an instrument of international policy, he reiterated again and again his faith that the United States and other free countries were destined eventually to come under Communist domination. In its simplest terms his challenge is: let us have peaceful competition, communism against capitalism, his system against ours. And he leaves no doubt about his faith as to the outcome—communism will inevitably prevail.

What should our answer be to his challenge?

Our first reply must be that we do not object to Mr. Khrushchev's predicting that our grandchildren will live under communism. But we do object if he attempts to force his prediction to come true by intervening in our affairs or those of other free nations.

And our counterprediction is not that his grandchildren will live under our system. The very essence of our belief is that all peoples must be free of outside intervention to choose for themselves the economic and political system they want. The very heart of American foreign policy is to develop policies which will assure retention of that freedom of choice for ourselves and others who have it and its extension by peaceful means to those to whom it is denied.

What should our answer be to his challenge for peaceful competition?

In the welter of words which were written and spoken during Mr. Khrushchev's visit, the most eloquent reply by an American to this question received far less attention than it deserved. May I quote from the remarks of Dr. Edward H. Litchfield, chancellor of the University of Pittsburgh, at the civic luncheon for Mr. Khrushchev in Pittsburgh on September 24:

"* * * None of us would challenge your right to adopt a slogan of 'Overtake and surpass the United States.' We just challenge your ability to do it. It should also be clear, I think, that we do not fear competition. Indeed, we are happy that you have introduced the concept of competition, for competition is the dynamic that we believe to be essential to a truly creative society. We are so convinced of the importance of this concept that we have built our institutions around it. It is the competition of ideas that leads to our convictions about free speech. The competition of opinions leads to a free press. Our two-party system is again a result of our conviction that competing programs will best serve the interests of our people and our Nation. We have learned something from competition, and that is this: when you have a competitor, you do better than when you don't. This is the essence of a competitive society. We welcome you as competitors. We welcome the time when you admit competition to your vocabulary, and we welcome you as a serious and effective competitor."

I would add to Dr. Litchfield's comments these thoughts. Every American citizen welcomes a competition which would result in the hard-working Soviet people receiving more of the good things of life which we enjoy in such abundance in the United States. And we will particularly welcome any move which will result in the Communist leaders directing more of their nation's resources into producing a better life for the Russian people and less toward the objective of expanding Communist domination over other peoples.

But we would make no greater mistake than to attempt merely to meet the Communist competition on the ground they select. We are convinced that our system in the long run is more efficient and more productive than the Communist system. But we have something far more to offer than an abundant production of material goods.

Theodore Roosevelt put it very well when he dedicated your first law building over a half-century ago. "Material prosperity alone," he said, "does not make true greatness. It is only the foundation for it, and it is the existence of institutions such as this that stands as one of its really great assets of which a nation can speak when it claims true greatness."

When Mr. Khrushchev says that the competition is between communism and capitalism, he misses the point on two counts.

Even on economic grounds, it would be more accurate to call it a competition between two forms of capitalism—one state controlled, the other controlled by the independent, free-market decisions and choices of literally millions of individuals. And, even on these same narrow economic grounds, we are convinced that free capitalism—creative individualism—can outproduce any form of state capitalism, just as it has up to now.

But the march of civilization cannot and must not be confined merely to economic systems. That is why Mr. Khrushchev's so-called historical analysis in which he traces a line of progress from feudalism to capitalism to communism falls down. History cannot be judged solely in material and economic terms. When we analyze these three systems in terms of freedom for the individual, we find that the change from feudalism to private capitalism was one from less freedom to more freedom. And a change now to communism would be going back rather than forward—exactly the reverse of progress.

That is why we say, "Let us broaden this competition to include the higher cultural and spiritual values that characterize the true forward march of our civilization." In a word, we reject the narrow ground on which he projects this competition. We reject the idea that the goals and desires of mankind begin and end with material abundance.

We are proud of the fact that 31 million Americans own their own homes. But what is even more important is that in this country a man's home is truly his castle. He has absolute protection against unreasonable search and seizure or confiscation of his property by the State.

It is indeed noteworthy to point out that 56 million Americans own their own automobiles. But what is even more important is that they can drive these automobiles anywhere they wish without travel permits and internal passports.

The fact that Americans own 50 million television sets and 143 million radio sets is a tribute to our industrial progress. But far more important is that those who speak over the airways can say what they wish without Government censorship and that those who own the sets have true freedom of choice as to what they hear and see.

Our homes, our highways, and our motorcars and electronic marvels are not ends in themselves but only the means, the necessary foundations, for a life of cultural and spiritual richness. For us this must be a life of individual freedom and human dignity—a life that liberates the human spirit of every restraint beyond its own inherent capability and then goes on to expand and increase that capability.

In this peaceful competition, therefore, let us test our systems to see which provides for individual human beings the greater opportunities for personal freedom and personal expression.

But up to this point we have been talking primarily about freedom. What does freedom have to do with the dedication of buildings for a school of law? This brings me back to my basic thesis—the relationship between Mr. Khrushchev's challenge and these ceremonies in which we are participating today.

The superficial observer might well say that law in our system is, of course, important but not nearly so important as freedom—freedom of speech and assembly, freedom of the press, freedom of religion, freedom to own property. But we know that law is not just something involving lawyers, judges, dry legal opinions, and magnificent law school facilities like these. The rule of law is the very heart and soul of a free system.

Freedom itself is meaningless outside the framework of law. Law provides the order that permits freedom to flourish. It mediates the inevitable disputes between free individuals. It defines the boundaries between liberty and license. It protects the individual in the exercise of his basic political rights. Law, in a word, makes freedom possible.

Let us consider just one very practical application of the concept of the rule of law—so much a part of our political and social order in fact that we probably take it for granted.

Consider the problem of political succession. In a Communist country this problem is almost continuously explosive. There is always an undercurrent of bitter struggle, of uncertainty, the threat of violent and unpredictable change. Communist countries are preeminently governments of men and not of laws—and of a particular group of men who at any given moment have the upper hand in the power struggle.

In this country we know exactly when a President's term will end, exactly what procedures will be followed to designate his successor, and exactly when the successor's term will end. We respect the procedures—the rule of law—for determining political succession, and, no matter how intense the rivalry may be, we abide by the decisions registered in free elections.

We could go on with other examples into every detail of relations between individuals and between individuals and government and the boundaries that subscribe political authority. But the point is as simple as it is essential: rule of law—impartial, enduring, universally respected, freely consented to—is in-

separably part of the living force of a free society. And it is a free society in its totality and not just as a system of production that we must match against communism in the competition to which Mr. Khrushchev has challenged us.

What we must also recognize is that, if competition between nations is to remain peaceful, there must be rules of the game to which all parties subscribe. There will inevitably be differences between nations even when their relations are friendly.

If we rule out, as we have and should, the use of force or threats of force as a means of settling differences where negotiations reach an impasse, the sole alternative is the establishment of the rule of law in international affairs.

There are some who suggest that the only answer is that nations should agree to submit all their disagreements to some new, all-powerful world tribunal. However well-intentioned such proposals may be, they are completely unrealistic in the present world context. As the distinguished Washington correspondent of the New York Times, Mr. Arthur Krock, said to me recently, "Great powers will submit details to arbitration but never their basic interests."

But the fact that the obstacles to establishing a rule of law among nations are formidable is no reason for wringing our hands in despair and doing nothing.

It took centuries to develop the rule of law where conflicts between individuals are concerned. The problem where nations are involved is infinitely more complex, and we should have no reason to expect a simple or quick solution.

But time is running out. As I said when I landed at the airport in Moscow a few weeks ago, "Men have developed weapons so awesome in their power that we must learn to live together or we will all die together." That is why I repeat today the proposals that I made before the American Academy of Political Science in April.

The United States should affirmatively explore ways in which its controversies with other nations can be submitted to and decided by the International Court of Justice at The Hague, an impartial tribunal of high quality which in these days of crowded calendars probably has less business before it than any court in the world.

One practical step is that the United States should take the initiative in proposing that in future international agreements provisions be included to the effect that disputes which may arise as to the interpretation of the agreement should be submitted to the International Court and that the nations signing the agreement should be bound by the decision of the Court in such cases. There is no more effective way that we can show the world by our example that the rule of law, even in the most trying circumstances, is the one system which all free men of good will must support.

It is significant to note that the American Bar Association has thrown its enormous moral authority and its practical influence into the fight for world peace under law by resolutions adopted this spring at its annual convention and by the establishment of a special study and action unit to make this influence felt throughout the world community. Two recent presidents of the bar, Charles Rhyne and Ross Malone, as well as the present holder of that office, John D. Randall, are eloquent and tireless advocates for internationalizing the concept of rule of law by every practical means. Appropriately, the bar association is your own next-door neighbor on this new campus. This is a tangible sign of the unity between legal scholarship and training and practice, between principle and action.

May I leave one final thought with you.

I have often been asked what stood out most about Mr. Khrushchev in my meetings with him. His vitality, his sense of humor, his immense drive impressed me greatly, as I am sure they did all Americans who had an opportunity to see or hear him. But to me the most outstanding characteristic of this powerful man is that, above all, whatever we may think of the ideas he advocates, he is a true believer.

I am sure that the overwhelming majority of Americans are convinced that our political and economic system will produce a richer, fuller life for people than will his. And in spite of the truly remarkable progress the Soviet people have made in science, so dramatically demonstrated by the space vehicle they launched yesterday, we have every reason to be confident that over all—in education, in science, in production—we are ahead of the Soviet Union and can stay ahead; that in those areas where they are ahead we can and will catch up; and that freedom, not communism, is the wave of the future.

But it is not enough to be on the right side. History is full of instances in which superior civilizations were overwhelmed by others who had more will to

win, more drive, more energy. Around the world, in every nation, the representatives of communism are true believers like Mr. Khrushchev—working overtime for the victory of communism in every non-Communist nation.

Our case is infinitely better. But men who are true believers cannot be matched by men who believe in nothing or, worse still, who do not know what they believe.

"The Ugly American" painted an exaggerated picture of the deficiencies of those who represent the United States abroad. We shall have to admit, however, that some of the criticisms were justified and need correction. But we could make no greater mistake than to assume that the problem will be solved if only those Americans who go abroad learn the languages and the customs of the nations to which they are sent.

Above all, what we need in those who represent us abroad, whether they are in government, business, or education, is dedication to American ideals, understanding of the differences between the principles of communism and of free societies, and a tough-minded, disciplined determination to work longer and harder for our cause than the Communists do for theirs.

I know that so-called patriotism and competitive spirit became somewhat out of fashion in recent years as a result of too much emphasis on these normally admirable virtues in times past. But I can say from my own experience that there is nothing this Nation needs more, particularly among its young people, than an intelligent, unshakable dedication to the universal ideals of freedom, justice, and peace, which are the heart of our American heritage.

I know that this great law school will continue to send out from its campus graduates who are superb legal technicians with all the qualities that will assure success in private practice, in business, or in the other professions they may select.

May I urge, too, that they may also be men with a mission, motivated by a flaming idealism based on the recognition of the fact that this last half of the 20th century can be the brightest or the darkest page in the history of civilization.

May their mission be not simply the negative objective of the defeat of communism but the positive goal of victory. And may the victory they work for not be the victory of America over any other people but the victory of all mankind—the victory of knowledge over ignorance, of plenty over want, of health over disease, of freedom and justice over tyranny, wherever these evils may exist in the world.

Men and women with practical, disciplined, legal minds inspired by such idealism will make a mighty contribution to a realization of the eternal goal of the American Revolution—a world in which men can be free, nations can be independent, and peoples can live together in peace and friendship.

STATEMENT OF SENATOR HENNINGS

The CHAIRMAN. I also wish to insert at this point in the proceedings a letter and statement from Senator Thomas C. Hennings, Jr., the chairman of the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary.

(The documents referred to follow:)

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS,
February 8, 1960.

HON. J. W. FULBRIGHT,
Chairman, Senate Committee on Foreign Relations,
Washington, D.C.

DEAR SENATOR FULBRIGHT: I regret that I will be unable to appear in person before your committee to recommend favorable consideration of Senate Resolution 94. Unfortunately, the Subcommittee on Constitutional Rights of which I am chairman, also has hearings scheduled for the morning of February 17.

However, I would appreciate the inclusion of a statement, which I enclose, in the record of your proceedings.

Sincerely yours,

THOMAS C. HENNINGS, Jr.,
Chairman.

STATEMENT OF SENATOR THOMAS C. HENNING, JR.

Mr. Chairman, it is now almost 14 years since the Senate voted approval for the adherence of the United States to the Statute of the International Court of Justice. Unfortunately, this action has done little to advance the rule of law in international affairs because of the Senate's adoption of the Connally amendment which withheld from the jurisdiction of the Court "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States as determined by the United States."

This reservation was as needless as it was unfortunate. The Statute of the Court limits its jurisdiction to questions of international law, and according to a recent report of the American Bar Association Section on International and Comparative Law, "The decisions of the Court lead us to the conclusion that it has acted with conservatism, and has given reason for more confidence in its judicial standing, scholarship, and impartiality than has in fact been generally accorded it by the various nations."

The shocking aspect of this situation is that the United States shares a major part of the responsibility for demeaning the Court's prestige. Mr. Charles H. Rhyne, chairman of the Committee on World Peace Through Law of the American Bar Association, has said that "It is the distrust of the Court implied in the U.S. Senate's words 'as determined by the United States of America' which destroys the prestige of, and confidence in, that Court."

We take considerable pride in being regarded as the Nation which leads the free world. But our leadership on the World Court offers us little in which we can take pride. The adverse effect of the Connally amendment has been so extensive that the Senate has a pressing responsibility in voting its early repeal.

None of the nations which adhered to the present Court's predecessor, the Permanent Court of International Justice, had placed limitations on their acceptance of that Court's jurisdiction. None of the nations adhering to the statute of the present Court did so—until after the United States set the example.

Since 1946—and the Connally amendment—seven nations have invoked reservations similar to our own. One of these nations, France, has recently withdrawn its reservation. Of all the members of NATO, the United States is the only Nation reserving to itself the right to determine jurisdiction of the International Court of Justice.

Nor has the adverse effect of the Connally amendment been limited to nations which followed our example. The Court, recognizing the principle of reciprocity, has allowed any nation to invoke the terms of the reservations of another nation with which it is involved in a dispute.

Needless to say the result has been disastrous to the effectiveness of the Court. The reservation of jurisdiction claimed by the Connally amendment violates a basic principle of jurisprudence. A Court without compulsory jurisdiction over the litigants is almost no court at all. The evidence in the case of the Court of international Justice is all too apparent—in its 14 years it has rendered decisions in less than a score of controversial cases.

The supreme irony of this situation is that few nations of the world have as great an interest in an effective instrumentality for the adjudication of international disputes—disputes which fall beyond the capabilities of national courts—than does the United States.

We find ourselves today intimately involved in the affairs of the world community. Millions of Americans spend much of their lives outside our national boundaries. They live and work abroad as representatives of our Government, as employees of the U.N., as businessmen, and in a host of other capacities. Vast numbers of other Americans go abroad every year as tourists or as students in institutions of learning throughout the world. In addition, Americans have invested billions of dollars in enterprises in other nations—and there is very substantial investment of foreign capital in the United States. Also, important segments of our domestic economy are heavily dependent on foreign markets and foreign trade.

These are matters of common knowledge. I mention them only to emphasize the paramount interest which we have acquired in an effective International Court. The United States, as a great world power, may, of course, settle disputes of an international nature by means other than that of law. However, such a course, I believe, would serve neither our national interest nor the cause of

world peace. We are truly the leader of the free world—a world whose basic principle is the rule of law.

I do not suggest that the repeal of the Connally amendment will bring forth with the rule of law to international relations—nor that it will establish world peace—but it will be a substantial beginning. Our own institutions of parliamentary government and our system of law and justice have developed over centuries. But international law also has an old and honored tradition. As we trace our civil liberties to the Magna Carta, international law can claim roots for its modern tradition in the works of Hugo Grotius written three centuries ago. However, while we have nurtured and carefully cultivated our system of domestic law, we have sadly neglected the law of nations. It is a neglect we can no longer afford.

If the United States is to continue to deserve the title, "leader of the free world," it is time that we direct that leadership toward the development of the rule of law in international affairs.

I urge the Committee on Foreign Relations to promptly report Senate Resolution 94 to the Senate. I believe it imperative that we give early approval to this measure repealing the Connally amendment and establishing without reservation the adherence of the United States to the Statute of the International Court of Justice.

The CHAIRMAN. The first witness scheduled for today is Mr. Louis G. Feldmann, of Hazleton, Pa., for the Veterans of Foreign Wars.

Mr. Feldmann, will you come forward, please? We are glad to have you here.

STATEMENT OF LOUIS G. FELDMANN, COMMANDER IN CHIEF, VETERANS OF FOREIGN WARS OF THE UNITED STATES

Mr. FELDMANN. Thank you very much, Senator.

The CHAIRMAN. You may proceed.

Mr. FELDMANN. Mr. Chairman and members of the committee, it is a pleasure and a rare privilege to appear before this distinguished Senate committee in behalf of the Veterans of Foreign Wars of the United States. For the record, my name is Louis G. Feldmann, and our organization is composed of 1,300,000 overseas veterans from every State in the Union.

For several years the Veterans of Foreign Wars has adopted annual resolutions expressing continued and unequivocal opposition to world government or any other movement which would diminish the sovereignty of the United States.

RESOLUTION ADOPTED BY VETERANS OF FOREIGN WARS

Last year the Veterans of Foreign Wars at its 60th annual national convention held in Los Angeles, Calif., August 30 to September 4, 1959, adopted an additional resolution involving the question of sovereignty which is in conflict with Senate Resolution 94, now under consideration by your committee.

May I say I am about to leave on a trip around the world in connection with the people-to-people program of the President, and I realize the feelings of many people in regard to this resolution, but I should like to read our resolution to you.

This resolution reads:

Whereas the Veterans of Foreign Wars of the United States adopts annual resolutions opposing world government in all its forms; and

Whereas there is now a proposal to amend Senate Resolution 196, 79th Congress to provide that the International Court of Justice should decide what are domestic issues as well as international issues; and

Whereas, decisions on what are domestic issues should remain the sole prerogative of our own Government and not put in the hands of an international court over which we would have little or no influence; and

Whereas inclusion of such a proposal was one reason why the United States rejected the old League of Nations; and

Whereas to permit the International Court under the United Nations to decide what are U.S. domestic, as well as what are international, issues would tend to endanger our Republic: Now, therefore, be it

Resolved, by the 60th National Convention of the Veterans of Foreign Wars of the United States, That we are unalterably opposed to giving an International Court of Justice the right, power and jurisdiction to decide what are U.S. domestic issues.

STEP TOWARD DIMINISHING U.S. SOVEREIGNTY

It is obvious that the Veterans of Foreign Wars membership is genuinely concerned that the approval of Senate Resolution 94 would be another step toward diminishing the sovereignty of the United States and granting more power to a world organization.

As I understand it, Senate Resolution 94 would confer upon the International Court of Justice the power to determine whether an issue is domestic or otherwise, and consequently, whether it comes within the jurisdiction of that Court.

Presently, the United States has sole authority to determine whether or not an issue is domestic and whether it comes under the jurisdiction of the International Court.

Approval of Senate Resolution 94 could give the International Court of Justice the authority to take jurisdiction over such U.S. domestic matters as tariffs, Panama Canal rates and the Canal itself, and immigration policies, many of which are regulated by treaties.

All of these issues are the subject of treaties in some instances and eventually might come before the International Court of Justice, where the result could have a profound effect upon domestic matters within the United States.

VIOLATION OF SPIRIT OF U.S. CONSTITUTION

More fundamental, perhaps, is the violation of the spirit of the Constitution of the United States which has vested supreme judicial authority in the Supreme Court of the United States of America.

There is general agreement that under our system the Supreme Court of the United States is the final arbiter of domestic issues and disputes. If Senate Resolution 94 is approved, we would have another court to determine issues which would be binding upon Americans who would have no recourse to appeal to the Supreme Court of the United States.

NO WELL-DEFINED BODY OF INTERNATIONAL LAW

It is also generally agreed that there is no well-defined body of international law similar or identical to the common law of the United States, and I might say in many countries not even similar to our statutory law. In some foreign countries the accused is assumed guilty until proven innocent, which is the reverse of our concept of

justice. Furthermore, the membership of this International Court permits only one American citizen. It follows, therefore, that the influence of the United States would be negligible since a maximum of 15 judges is permitted on this Court.

It is not strange, therefore, that many Veterans of Foreign Wars members are concerned that decisions by this International Court might not be in keeping with the judicial tradition and integrity of our own common law courts.

STATUS-OF-FORCES AGREEMENTS

Our experience with status-of-forces treaties where foreign courts have been given authority to try and sentence American servicemen charged with alleged crimes in foreign countries has caused Veterans of Foreign Wars members to become extremely concerned over the possible exercise of judicial power by international courts over the constitutional rights of American citizens.

May I say from my own experience that my experience with these treaties and status-of-forces agreements is that they are rapidly destroying the morale of the serviceman overseas. It is this issue of precious constitutional rights of American citizens that moves our members so deeply, rather than the settlement of property or territorial disputes.

QUESTIONS FOR INTERNATIONAL COURT OF JUSTICE TO SETTLE

I believe Veterans of Foreign Wars members strongly favor an International Court of Justice to settle questions of true international law, and interpretation of treaties, and breaches of international obligations, providing the question of individual rights of American citizens under the Constitution of the United States remains exempt from jurisdiction of such an international court.

The membership of the Veterans of Foreign Wars has long demanded that the liberty and individual rights of American citizens be not subject to the consideration and decision of any international organization or court.

In conclusion, therefore, it is the strong recommendation of the Veterans of Foreign Wars that the International Court of Justice be not given authority to determine whether disputes involving constitutional liberty and freedom of American citizens are domestic.

This authority should be retained by the U.S. Government, and we are not only opposed to world Government but we are opposed to Senate Resolution 94 in its present form.

Thank you for this privilege and your consideration.

The CHAIRMAN. Thank you, Mr. Feldmann.

Any questions, Senator Green?

Senator GREEN. No.

DEFINING THE COURT'S JURISDICTION

The CHAIRMAN. Senator Hickenlooper?

Senator HICKENLOOPER. Mr. Feldmann, are you a lawyer?

Mr. FELDMAN. Yes; I am, sir.

Senator HICKENLOOPER. As a lawyer, do you know of any area of control over the International Court which is clear and definitive?

Mr. FELDMANN. No, sir; I know of no such area. May I say the resolution itself seems to me to be extremely vague.

Senator HICKENLOOPER. In other words, do you know of any body of statutory law or any definitive authoritative legislation of any kind that delineates or circumscribes the jurisdiction of this Court, other than the rather vague terms of the Statute and the United Nations Charter?

Mr. FELDMANN. No, sir; and the Statute of the Court itself is so broad that, as I see it, the members of the Court can literally decide where they can go and where they have to stop, if there is any point at which they have to stop.

Senator HICKENLOOPER. I believe that is all, Mr. Chairman.

WITHDRAWAL IN EVENT COURT EXCEEDED ITS JURISDICTION

The CHAIRMAN. Mr. Feldmann, there is this recourse: That if the Court went beyond what we believed to be its proper jurisdiction, we could withdraw, could we not, after 6 months?

Mr. FELDMANN. After 6 months; that is correct, Senator. But by then a considerable amount of damage could be done before we could withdraw, and the decision might be one that might cause the same thing as the situation in the Status of Forces Treaty in Japan, or the Status of Forces Treaty in Turkey, where frankly, I think, instead of helping us it has caused our relations to deteriorate and certainly has hurt the morale of the servicemen involved because they worry about these things. Whether they have any right to worry or not is not important—they do.

CLAIMS OF U.S. CITIZENS AGAINST FOREIGN GOVERNMENTS

The CHAIRMAN. Is it true that our citizens have more economic transactions, are involved in more business all throughout the world, and that they would have greater use in seeking to obtain justice in their cases against foreign governments or foreign citizens than nearly any other country?

Mr. FELDMANN. If you notice, Senator—I would agree with you; yes—if you notice, within my statement I have embraced the fact that I am not nearly as worried about property rights as I am about individual rights. I wouldn't be here if all that was involved in this resolution was determining property rights.

Senator FULBRIGHT. We have some cases right at the moment, not cases in the legal sense but instances in which the property of American citizens is being expropriated in Cuba. Just what their recourse is going to be, since there is no legal forum to which they can resort, is a question. I just raise the question that if you could obtain some international juridical body that could help our citizens prosecute their claims against foreign citizens or foreign governments, it might be extremely useful to them, wouldn't it?

Mr. FELDMANN. I would completely agree with your statement, and if this resolution was boiled down to the point that it relates only to property rights of our citizens and our corporate citizens, certainly again I say I wouldn't be here.

But this resolution I believe, Senator, is much broader than that.

JURISDICTION OF THE COURT

The CHAIRMAN. In the cases that have been brought before the Court, have any of them involved an example of the kind of right that you are fearful that the Court will have jurisdiction over?

Mr. FELDMANN. Not to the best of my knowledge, Senator; but, as I read this resolution, this Court could pass on our Status of Forces treaties and our Status of Forces agreements, for example.

They could pass on the Panama Canal as a canal itself, pass on the rights of the Canal, pass on our international agreement with Mexico relating to the so-called wetbacks.

There are a number of things where it could involve many personal rights.

The CHAIRMAN. But so far as you know, in the cases which have been before the Court, they have involved property rights?

Mr. FELDMANN. So far as I know. I don't think there have been too many cases before the Court. I don't think the Court has been too active.

The CHAIRMAN. It hasn't been active because it doesn't have any jurisdiction.

We set up a court and then withdrew its jurisdiction.

Mr. FELDMANN. I would agree. That is correct; yes.

CLAIMS OF U.S. CITIZENS AGAINST FOREIGN GOVERNMENTS

The CHAIRMAN. There have been lots of people with complaints but they have no place to go; is that not correct?

Mr. FELDMANN. That is right.

The CHAIRMAN. You know of people, American citizens, who have complaints, who have claims that they can't prosecute. Is that right?

Mr. FELDMANN. I would completely agree, and I want to make it clear, sir, I am in favor of an international body of law, and I am in favor of an international court. But I think the International Court, as I think possibly Senator Hickenlooper was getting at, that what they can decide and how far they can go should be carefully circumscribed, so we are not giving away something that we didn't intend to give away.

The CHAIRMAN. Thank you very much, Mr. Feldmann. I think you have made your position very clear. I appreciate your coming.

Mr. FELDMANN. Thank you, sir.

Senator HICKENLOOPER. Mr. Chairman, I just want to verify my position on that question that I asked of Mr. Feldmann a while ago.

It might be interpreted as going to the point of whether or not we are giving away something that we didn't know we were giving away. My question is a little bit deeper than that, perhaps. What I mean is that I intended to explore a little more deeply than that, and I will pursue later the question of uncertain jurisdiction, undefined jurisdiction, the extent of the power and authority to which we would be agreeing to submit.

I do want, with reference to one of the chairman's questions, to say frankly that I question whether an individual could come into this Court or not for individual claims because the Statute makes it clear that only states are parties.

The state may be able under this Statute of the International Court to come in as a friend of the individual, but as a representative of the individual, I don't know. There are many unclear things about this matter. Whether the Court could adjudicate personal property rights of individuals in various countries as against a foreign government of which they are not nationals, is a question that I am not at all clear on.

Thank you, Mr. Chairman.

Mr. FELDMANN. I might say the reason that I answered as I did is that I assumed that possibly there might be some ex rel proceedings and that is the reason I answered it that way. I don't know either.

Before I retire, might I have permission to insert within the record in the next few days any other pertinent matter that we might have?

The CHAIRMAN. Yes.

Mr. FELDMANN. Thank you very much.

The CHAIRMAN. Thank you, Mr. Feldmann.

The next witness is Mr. Daniel, of the Virginia Commission on Constitutional Delegates. Mr. Daniel, we are glad to have you. Will you proceed, sir?

STATEMENT OF W. C. "DAN" DANIEL, VIRGINIA COMMISSION ON CONSTITUTIONAL DELEGATES, RICHMOND, VA.

Mr. DANIEL. Mr. Chairman and gentlemen of the committee, for the record my name is Dan Daniel and I am testifying this morning on behalf of the Virginia Commission on Constitutional Delegates and although I am past national commander of the American Legion and the Legion has taken a position with respect to Senate Resolution 94, or the purpose of Senate Resolution 94, I am not speaking for that body.

For this opportunity to appear briefly before you and for the privilege which you have given me, I will testify briefly and I am certainly sincerely and very grateful. The first page and a half of my testimony is a history of which you know more than I and I shall not burden you with a restatement of that history.

ARGUMENTS MADE BY PROPONENTS OF SENATE RESOLUTION 94

"As determined by the United States"—to section (b) of the proviso. It meant simply that we reserved the right to say whether a matter involving our Nation was one of international or domestic concern. This is such an obviously sensible limitation that argument in support or defense of it would seem superfluous were it not for the fact that a number of persons of considerable public prominence and persuasion urge its repeal.

Briefly their arguments in favor of abridging this safeguard to our national sovereignty seem to be—

Senator HICKENLOOPER. Mr. Chairman, I am unable to follow the witness.

Mr. DANIEL. I am on page 2. I skipped over as I explained in my remarks. I am on the bottom of page 2.

Senator GREEN. I hope you will draw attention to the fact when you omit something.

Senator HICKENLOOPER. He did, Mr. Chairman.

Mr. DANIEL. Yes, sir. I omitted the first page and a half and started with my definition of the meaning of the Connally amendment, because that portion of it was history and I did not wish to repeat.

Senator HICKENLOOPER. I am sorry.

Mr. DANIEL. Shall I start where I started before or at the bottom of the page?

Senator HICKENLOOPER. Just continue.

Mr. DANIEL. I am on the last paragraph, page 2. Briefly, their arguments in favor of abridging this safeguard to our national sovereignty seem to be that the nations of the world are not using this International Court as a means of settling their differences. As I understand it, only about one case a year has been before the Court and that this situation is attributable to the fact that other nations have followed the example set by us in the Connally amendment.

These exponents of "one-worldism" take the position that the United States cannot be trusted to decide the question of jurisdiction fairly, but that we can trust the World Court to make the proper decision for us, that is, that we can rely with confidence upon the World Court not to infringe on our domestic concerns.

Also, we are told that if we make this basic, possibly fatal, cession of sovereignty, others, including the Communist countries, will be shamed into doing the same and then we will have a world ruled by law instead of by force.

This latter is, of course, utter nonsense. I doubt if anyone in this room really believes that a dedicated Communist can be shamed into anything, certainly not into giving up any position of strength he may occupy.

A Communist has no conscience in the sense we know it—his only shame comes in failing the Communist cause of world domination. But it seems hardly necessary to argue this particular point.

If the administration or the Congress had any real confidence in the effect of moral or legal suasion or of world opinion on the aggressive aims of communism, I doubt if the arguments being made in these very halls on virtually every major issue—defense, education, welfare, budget, et cetera—would be so intimately and repeatedly tied into the strength of our national posture in relation to Russia and China.

Now, gentlemen, you know that until God puts love and charity foremost in every heart, the safety of the world is more dependent on the strength and freedom of the United States than on anything else.

For example, the hydrogen bomb I might add, sir, poses no threat to humankind. It is only when it is placed in the hands of despots that it becomes a menace. The difficulty seems to be that apparently some have been misled as to the extent of the risk involved in repeal of the Connally amendment.

PROBLEMS IN ENFORCING COURT'S DECREES

For a court decree to have any binding or peacemaking effect, it must be accepted by the parties affected. Acceptance comes in only two ways, either voluntarily because the parties, particularly the unsuccessful one, feel that the preservation of law and order is more

important than their own selfish desires; or else, because the court has the power necessary to force acceptance.

Little need be said concerning the futility of placing our hopes for world peace on the first of these. For those nations which are willing to subordinate selfish aims for the peace of society as a whole, the world does not need a court—diplomacy will suffice.

For the others, well, I am sure you can imagine just how far Messrs. Khrushchev, Mao Tse Tung, or even Castro would go in voluntarily acceding to a distasteful court decree.

This brings up the matter of the establishment of an international military force of sufficient strength to enforce decrees of this court against any party.

The ultimate necessity for this is so obvious that the groundwork has already been laid within the United Nations.

Here, then, is the question: Are the Senators willing now to agree that we will either voluntarily obey, or that the international troops may enter these United States to enforce decrees of this Court concerning our labor, racial, financial, and who knows what other domestic problems?

I think not.

INTERPRETATIONS OF JUDGES OF COURT

"But," say the one-worlders, "this is an unfair question: the Court's jurisdiction extends only to international matters—domestic matters are excluded." How weak must be their perception, how short their memories.

Whether these problems would come within the jurisdiction of the Court, once the Connally amendment were repealed, would depend on nothing more than the Court's own interpretation of such words as "essentially," "domestic," "international," "any," and "obligation."

And remember, sir, that all of these words are found in the Morse resolution. Quite obviously, the judges' respective interpretations would be colored by their background, purposes, and ideology.

Many things that we think of as being of strictly domestic concern might well be of international concern to a majority of the members of the Court whose political views are entirely different from ours.

Indeed, would it be reasonable to expect such a Court, being the creature of the United Nations, not to give a broad interpretation to those international "obligations"—that is the word used in clause (c) of the World Court resolution—set forth in that biggest of all treaties, the United Nations Charter?

For example, subsection (a) of article 55 makes it an obligation of member nations to promote: "higher standards of living, full employment, and conditions of economic and social progress and development."

INTERPRETATIONS GIVEN TO CONSTITUTIONAL PROVISIONS

After all, judges, like other men, have a natural tendency to aggrandize those institutions with which they are connected.

This is nothing new. For example, you will search in vain for any provision in the U.S. Constitution granting the Federal Government the right of eminent domain. Except for the fifth amendment,

the only provision on this subject is found in section 8, article 1, which reads in part as follows:

* * * and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful buildings; * * *

For a number of years, the Federal Government observed this apparent limitation and the States condemned the land for it.

Being federally minded, however, the Supreme Court had decided by 1875 that this was not a good limitation on the Federal Government and so simply held that any government as big as the Federal Government naturally had its own right of eminent domain.

The constitutional phrase dealing with the consent of the State bothered it not at all—the Court merely moved it over to modify the phrase “exercise like authority” instead of the word “purchased.”

Regardless of whether we think it was right or wrong, it is common knowledge that the meaning and scope of the general welfare, the interstate commerce, and the necessary and proper clauses among others, have been stretched beyond all possibility of recognition by those who adopted them.

And you have seen matters of purely State concern at the time the 14th amendment was adopted—and so pronounced repeatedly for some 70 years by the highest court in the land—changed overnight into matters of Federal concern.

The wording of the Constitution really remained the same—later members of the Supreme Court simply decided that they did not like its initial meaning and so changed it.

Indeed, the members of our highest court have substituted their own notions of right and wrong in place of once plain constitutional provisions to such an extent that the chief justices of the several States, in conference assembled, felt compelled to censure them in unprecedented fashion.

The point is this. If “interpretations” can expand and change so with judges of the same nationality and with a common legal and political heritage, how much stability and respect can we expect a polygot international court to exhibit with regard to the scope and meaning of such words as “domestic concern” and “international concern”?

And need I remind you again that the United Nations Charter was adopted as a treaty. Under article VI of our national Constitution a treaty “shall be the supreme law of the land; and the judges in every State shall be bound thereby.”

REASONS FOR OPPOSITION TO S. RES. 94

One of the principal reasons this great legislative body was created was to act as a special guardian for the basic rights of this country, its individual States, and the people therein, and to guard against precipitate or emotional legislative action. It is my sincere hope that you will live up to that purpose in this connection and kill any attempt to repeal the Connally amendment.

I am persuaded, sir, that we must do all that we can to stem this tide toward world government.

To do otherwise is to condemn our Nation to the graveyard of decadence, the repository of so many countries whose people have forsaken their ideals and compromised their principles.

Thank you very kindly, sir.

BASIS FOR ARGUMENT AGAINST SENATE RESOLUTION 94

Senator GREEN. Thank you, Mr. Daniel. I followed your argument very closely, and it is very broad in extent. Why would it not apply to almost any treaty?

Mr. DANIEL. The point that I am trying to make here, sir, is that we have had difficulty getting our own courts to stick to constitutional interpretations, and if we go now and accept the jurisdiction of a 15-man court whose political philosophies are entirely different, then what can we expect from that type of court?

That is my chief concern, sir, in appearing here this morning.

Senator GREEN. How would you define the line of distinction between this and other treaties?

Mr. DANIEL. That is just the point. I think that is the point exactly, that we do not wish to put the sovereignty of our country in the hands of any international court or any international body.

Don't misunderstand me, sir. I am not opposed to the International Court. I am in favor of the International Court so long as we decide which matters are domestic and which of international concern. That is my only objection.

If we can maintain the status quo, and I understand that is Latin for the mess we're in, then I would be perfectly happy to have it remain as it is.

Senator GREEN. But logically why do you make that distinction?

Mr. DANIEL. This is the only case—I am not a lawyer, Mr. Green but—

Senator GREEN. I have the misfortune to be.

Mr. DANIEL. I regret to say that I am not an attorney, but this is the only instance in which I know of that an international court is given the authority to decide, or would be the only court which would have the authority to decide which were domestic and international concerns.

Senator GREEN. Your argument is what lawyers call an argument ad hominem based on principle.

Mr. DANIEL. I plead ignorance, sir.

Senator GREEN. Why wouldn't you call the same attention to any treaty?

Mr. DANIEL. I think there is a lot of objection to other treaties. It has been my privilege to travel over the world quite extensively in the last few years and I will tell you quite frankly, sir, that I think this Status of Forces agreement has caused considerable deterioration of the status of this country in the eyes of foreign people.

QUESTION OF TRUST TO BE PLACED IN COURT

Senator GREEN. Senator Hickenlooper, have you any questions?

Senator HICKENLOOPER. Just a comment. I want to say, Mr. Daniel, I think you have presented your views and your position here with a very high degree of clarity, and a high degree of force.

Mr. DANIEL. Thank you, sir.

Senator HICKENLOOPER. And I think you have touched on some of the very fundamental issues involved in this whole matter. I was especially interested in one or two statements you made which I think merit some thought and discussion.

One is the question that you raised that if the United States can't be trusted to decide these things, how can we trust an international court to decide these matters?

That is, we would be admitting our own incompetence, in a way, to do justice in our decisions.

Mr. DANIEL. Sir, that is my basic concern with the repeal of this amendment.

DIFFERENT VIEWS OF JUSTICE AND EQUITY

Senator HICKENLOOPER. Now you have many other points here in this presentation which are quite intriguing. I think one of the most powerful things that you have touched on here is the suggestion or the statement, whichever you choose, that even with a community of laws and common heritage which we have in this country, we not only have difficulty sometimes in arriving at what everybody believes to be justice and equity, but there are those who feel that our Supreme Court has rather gone out of the ball park on some decisions which offer no remedy whatsoever so far as those who disagree are concerned.

How much more danger would we be facing with a Court that is composed of people who do not have that common background of, let's say, legal tradition and traditions of justice and equity and so on?

Mr. DANIEL. And I might add, sir, if I may, that my experience in traffic around foreign countries has been that the dictionaries of these countries have an entirely different meaning for the same word or words of our dictionary here.

For example, I think Mr. Khrushchev is perfectly sincere when he talks about peace, but peace to Mr. Khrushchev means one thing and to you and I, sir, it means something entirely different.

I think that to Mr. Khrushchev it means an era in which all the people of the world have succumbed either to the external or internal pressures of communism. When he talks about peaceful coexistence I think he is sincere there, but again, peaceful coexistence to him means that we are willing to subordinate our desires to the desires of the Soviet Union, that we accept his domination, for example, over the satellite countries of Eastern Europe, that we accept the divided Germany and besieged Berlin and all that type of thing.

That is another reason why I am so concerned about this Court. It has different political philosophies and different meaning for words.

Senator HICKENLOOPER. In other words, you think Mr. Khrushchev has the same ideas as the top sergeant when he says he is going to have peace in his outfit, that he will if he has to lick every man in the outfit to get it.

I thank you. I think you have made a very clear and concise statement of your position.

Senator GREEN. Thank you very much, Mr. Daniel.

Mr. DANIEL. Thank you, gentlemen.

(Mr. Daniel's prepared statement follows:)

STATEMENT OF W. C. "DAN" DANIEL, MEMBER OF THE VIRGINIA COMMISSION ON CONSTITUTIONAL GOVERNMENT

The United Nations Charter provided for the establishment of an International Court of Justice of 15 judges to be employed in the settlement of international disputes. To make the United States subject to this Court, the now senior Senator from Oregon, Mr. Morse, introduced a resolution declaring that these United States would be bound by the Court's jurisdiction " * * in all legal disputes hereafter arising concerning—

"(a) the interpretation of a treaty;

"(b) Any question of international law [emphasis supplied];

"(c) the existence of any fact which, if established, would constitute a breach of an international obligation [emphasis supplied];

"(d) the nature or extent of the reparation to be made for the breach of an international obligation;

Provided, That such a declaration shall not apply to—

"(a) disputes the solution of which the parties shall entrust to other tribunals by virtue of agreements already in existence or which may be concluded in the future;

"(b) disputes with regard to matters which are essentially within the domestic jurisdiction of the United States * * *"

Although domestic matters were ostensibly excluded from the Court's jurisdiction, no guide or line of demarcation was established for determining which matters were international and which were domestic. This would have left it for the Court to decide its own jurisdiction. To blunt this sword pointed at the very heart of our Nation, the Connally amendment was adopted, adding six words—"as determined by the United States"—to section (b) of the proviso. It meant simply that we reserved the right to say whether a matter involving our Nation was one of international or domestic concern. This is such an obviously sensible limitation that argument in support or defense of it would seem superfluous—were it not for the fact a number of persons of considerable public prominence urge its repeal.

Briefly, their arguments in favor of abridging this safeguard to our national sovereignty seem to be that the nations of the world are not using this International Court as a means of settling their differences (I understand the Court has had fewer than a dozen cases since it was created) and that this situation is attributable to the fact that other nations have followed the example set by us in the Connally amendment. These exponents of "One-Worldism" take the position that the United States cannot be trusted to decide the question of jurisdiction fairly, but that we can trust the World Court to make the proper decision for us—that is, that we can rely with confidence upon the World Court not to infringe on our domestic concerns. Also, we are told that if we make this basic, possibly fatal, cession of sovereignty, others, including the Communist countries, will be "shamed" into doing the same, and then we will have a world ruled by law instead of by force.

This latter is, of course, utter nonsense. I doubt if anyone in this room really believes that a dedicated Communist can be shamed into anything, certainly not into giving up any position of strength he may occupy. A Communist has no conscience in the sense we know it—his only shame comes in failing the Communist cause of world domination. But it seems hardly necessary to argue this particular point. If the administration or the Congress had any real confidence in the effect of moral or legal suasion or of world opinion on the aggressive aims of communism, I doubt if the arguments being made in these very halls on virtually every major issue—defense, education, welfare, budget, etc.—would be so intimately and repeatedly tied into the strength of our national posture in relation to Russia and China. No, gentlemen, you know that until God puts love and charity foremost in every heart, the safety of the world is more dependent on the strength and freedom of the United States than on anything else. The difficulty seems to be that apparently some have been misled as to the extent of the risk involved in repeal of the Connally amendment.

For a court decree to have any binding or peacemaking effect, it must be accepted by the parties affected. Acceptance comes in only two ways, either voluntarily because the parties, particularly the unsuccessful one, feel that the preservation of law and order is more important than their own selfish desires; or else, because the court has the power necessary to force acceptance. Little

need be said concerning the futility of placing our hopes for world peace on the first of these. For those nations which are willing to subordinate selfish aims for the peace of society as a whole, the world does not need a court—diplomacy will suffice. For the others—well, I am sure you can imagine just how far Messrs. Khrushchev, Mao Tze Tung, or even Castro would go in voluntarily acceding to a distasteful court decree.

This brings up the matter of the establishment of an international military force of sufficient strength to enforce decrees of this Court against any party. The ultimate necessity for this is so obvious that the groundwork has already been laid within the United Nations.

Here, then, is the question: Are the Senators willing now to agree that we will either voluntarily obey—or that international troops may enter these United States to enforce—decrees of this Court concerning our labor, racial, financial, and who knows what other domestic problems? I think not. "But," say the One Worlders, "this is an unfair question; the Court's jurisdiction extends only to international matters; domestic matters are excluded." How weak must be their perception, how short their memories.

Whether these problems would come within the jurisdiction of the Court, once the Connally amendment were repealed, would depend on nothing more than the Court's own interpretation of such words as "essentially," "domestic," "international," "any," and "obligation." Quite obviously, the judges' respective interpretations would be colored by their background, purposes, and ideology. Many things that we think of as being of strictly domestic concern might well be of international concern to a majority of the members of the Court whose political views are entirely different from ours. Indeed, would it be reasonable to expect such a Court, being the creature of the United Nations, not to give a broad interpretation to those international "obligations"—that is the word used in clause (c) of the World Court resolution—set forth in that biggest of all treaties, the United Nations Charter. For example, subsection (a) of article 55 makes it an obligation of member nations to promote: "higher standards of living, full employment, and conditions of economic and social progress and development."

After all, judges, like other men, have a natural tendency to aggrandize those institutions with which they are connected.

This is nothing new. For example, you will search in vain for any provision in the U.S. Constitution granting the Federal Government the right of eminent domain. Except for the fifth amendment, the only provision on this subject is found in section 8, article 1, which reads in part as follows:

"* * * and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; * * *"

For a number of years, the Federal Government observed this apparent limitation and the States condemned the land for it. Being federally minded, however, the Supreme Court had decided by 1875 that this was not a good limitation on the Federal Government and so simply held that any government as big as the Federal Government naturally had its own right of eminent domain. The constitutional phrase dealing with the consent of the State bothered it not at all—the Court merely moved it over to modify the phrase "exercise like authority" instead of the word "purchased."

Regardless of whether we think it was right or wrong, it is common knowledge that the meaning and scope of the "general welfare," the "interstate commerce," and the "necessary and proper" clauses, among others, have been stretched beyond all possibility of recognition by those who adopted them. And you have seen matters of purely State concern at the time of the 14th amendment was adopted—and so pronounced repeatedly for some 70 years by the highest courts in the land—changed overnight into matters of Federal concern. The wording of the Constitution remained the same—later members of the Supreme Court simply decided that they did not like its initial meaning and so changed it. Indeed, the members of our Highest Court have substituted their own notions of right and wrong in place of once plain constitutional provisions to such an extent that the chief justices of the several States, in conference assembled, felt compelled to censure them in unprecedented fashion.

The point is this. If "interpretations" can expand and change so with judges of the same nationality and with a common legal and political heritage, how much stability and respect can we expect a polyglot international court

to exhibit with regard to the scope and meaning of such words as "domestic concern" and "international concern"? And need I remind you again that the United Nations Charter was adopted as a treaty. Under article VI of our National Constitution a treaty "shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby."

One of the principal reasons this great legislative body was created was to act as a special guardian for the basic rights of this country, its individual States and the people therein, and to guard against precipitate or emotional legislative action. It is my sincere hope that you will live up to that purpose in this connection and kill any attempt to repeal the Connally amendment.

Senator GREEN. The next witness is Miss Marie Klooz, Women's International League for Peace and Freedom. We are glad to have you here this morning and we will be glad to hear from you now.

STATEMENT OF MARIE KLOOZ, WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM

Miss KLOOZ. This statement was prepared by the chairman of our national policy committee, Mrs. Dorothy Hutchinson, who appeared before you on Study No. 1 a couple of weeks ago. At the time she expected to appear on the 27th but she was unable to come so she asked me to appear in her stead.

I am Miss Marie Klooz, a member of the national legislative committee.

Senator GREEN. You appear for Mrs. Hutchinson?

Miss KLOOZ. Yes, sir. The Women's International League for Peace and Freedom is grateful for this opportunity to appear before you on behalf of Senate Resolution 94.

SUBSTITUTION OF LAW FOR WAR

Our organization was founded in the heat of the First World War more than 5 years before the Permanent Court of International Justice, the predecessor of the present World Court. During all this time as well as since the birth of the United Nations and the present International Court of Justice we have urged the substitution of law for war as a means of getting international disputes settled. We have recognized that drive for power, longstanding fears, and suspicions between nations, and genuine conflicts of interests are among the facts of international life.

Therefore, while we have worked for the long-term task of eliminating these causes of war we have also urgently advocated the establishment and use of international machinery capable of obviating resort to violence and facilitating the peaceful solution of the current international disputes arising from these causes.

For this reason we have wholeheartedly supported the United Nations and all the possibilities it offers for peaceful settlement of our conflict situations. The International Court of Justice is intended to be a most useful organ of the United Nations for this purpose.

However, distrust of the competence and impartiality of the new Court led to insertion of the optional clause in the Statute of the Court, instead of giving it general compulsory jurisdiction in legal disputes.

RESERVATION SEEMS UNNECESSARY

Many nations have not chosen to be bound by the optional clause including the U.S.S.R. and its satellites.

Others have accepted the Court's jurisdiction subject to conditions and reservations. The United States, in accepting the optional clause, reserved the right to decide for itself whether or not a dispute to which the United States is a party is within the Court's jurisdiction or is a matter of domestic jurisdiction.

This amounted to reserving a U.S. veto over its submission to the Court of disputes concerning the United States. Since the Court has no jurisdiction over domestic matters in any case under article II of the United Nations Charter, such a reservation seems unnecessary.

Moreover, article 36, paragraph 6, of the Court's statute says:

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

UNREASONABLENESS OF THE RESERVATION

Finally the unreasonableness of the reservation is obvious. It could and does prevent the United States from resorting to the Court for a decision even in a case where we are convinced we are rightly injured. Why? Because of the reciprocal nature of the obligation under the Statute. Any nation against which we might wish to bring suit is now able to claim the right to plead domestic jurisdiction against us and can therefore deny that the dispute is within the jurisdiction of the Court.

The Attorney General has pointed out that France and India recently withdraw a similar reservation, and that the United States is now alone among the NATO nations to retain such a reservation.

The prestige and value of the Court are clearly hampered by a lack of use. In 14 years there have been 17 decisions and 10 advisory opinions. Because a number of nations have followed the example of the United States in adopting similar reservations, the work has undoubtedly been hampered.

A SYSTEM OF LAW

As the world moves further into the nuclear age with its dangers of total annihilation by accident, an increasing number of spokesmen for both political parties and the American Bar Association, deans of law schools, and authorities on international law in the United States and elsewhere are agreed with the President that there can be no peace without law.

One of the essential characteristics of a rule of law rather than men is the compulsory jurisdiction of the courts in the finality of their judgments.

Hence it is timely that the United States rescinds the self-judging amendment to our acceptance of jurisdiction as evidence of our avowed policy favoring the system of law.

GIVING COURT JURISDICTION OVER DISPUTES REGARDING TREATIES

We hope the United States will continue to resort promptly to the Court for decisions in all legal disputes including the many clearly legal aspects of political situations. Our organization believes that new international treaties should contain a clause specifically giving the Court jurisdiction over disputes which may arise about their interpretation. Hence we are glad to learn that you now have before you an optional protocol concerning compulsory settlement of disputes in connection with the four conventions on the law of the sea presented for your advice and consent and ratification; that the protocol gives compulsory jurisdiction to the International Court of Justice for disputes arising out of the interpretation or application of any convention on the law of the sea except where other provision for settlement has been made; and that 30 states have signed it by the closing date for signature. We hope that you will consent to its ratification.

BUILDING A GROWING TRUST IN COURT'S COMPETENCE AND IMPARTIALITY

Giving the Court more work to do is the only way to build a growing trust in its competence and impartiality. Rescinding the self-judging amendment is a necessary first step in this direction. The self-judging amendment has made the United States appear to the world as abetting the aspirations cast on the power, prestige, and usefulness of the legal arm of the United States.

The removal of this reservation would therefore increase the world's faith in this, our desire to substitute third party judgment for unilateral action in dealing with international conflict situations.

Removal of this reservation would no doubt result in similar steps by other nations who have made similar reservations. With a wider acceptance of compulsory jurisdiction through the removal of reservations, perhaps others may be led by example and the force of public opinion to accept compulsory jurisdiction also.

ELIMINATION OF OTHER RESERVATIONS RECOMMENDED

As to the specific resolution before you, we agree with the criticism of Professor Briggs of Cornell University who spoke in behalf of the resolution on January 27. We also think the three provisions lettered (a), (b), and (c) are surplusage. We believe they add nothing to the protection of the United States or its interests and should therefore be deleted from the final draft of your report.

Specifically, (a) is unnecessary because it repeats virtually the language of article 95 of the United Nations Charter which you have already approved.

Article 2, paragraph 7 of the same charter covers (b) in virtually the same language, and is in effect merely declaratory of customary international law. Since article 59 of the Court's Statute provides specifically that its decisions bind only the parties to the proceeding and in respect of that particular case, (c) too is unnecessary. Moreover, we deplore any derogation from the general principle of acceptance of compulsory jurisdiction by substitution of the requirement for special agreement to jurisdiction.

As an indication of our interest in such a resolution as this, I submit for the record copies of a resolution of our annual meeting of 1955 and of our national board of last February.

The world has a long road to travel from international anarchy to an adequate rule of international law and world order. However, every journey starts with a first step. Hence we hope that the committee will report the resolution favorably.

May the resolutions be included in the record?

They are on the last page.

Senator GREEN. Do you wish to read those?

Miss KLOOZ. If you like.

Senator GREEN. We have them in print here and we can read them. The whole document will go into the record.

Miss KLOOZ. Thank you.

Senator GREEN. That will avoid the necessity of reading them.

(The resolutions referred to follow:)

ANNUAL MEETING RESOLUTION RE INTERNATIONAL COURT OF JUSTICE

The Women's International League for Peace and Freedom, in annual meeting at Mills College, Oakland, Calif., July 10-15, 1955, recognizing that a steady growth of international law is essential to the development of peaceful relations among nations, urges rescinding of the reservations attached to our acceptance of the compulsory jurisdiction of the International Court of Justice, by which an exception is made of "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States as determined by the United States." This action would remove a virtual veto by the United States over the Court's competence to determine what is domestic jurisdiction in disputes to which the United States is a party. Thus it would place this country on the same basis as other nations which have accepted the compulsory jurisdiction of the Court, and would demonstrate our willingness to rely on reason rather than power in the settlement of legal disputes.

NATIONAL BOARD RESOLUTION RE INTERNATIONAL COURT OF JUSTICE

The National Board of the Women's International League for Peace and Freedom, meeting in Philadelphia, February 6-8, 1959, having for 44 years urged the substitution of law for war in the settlement of international disputes, is gratified that President Eisenhower's state of the Union message promised "a re-examination of our own relation to the International Court of Justice * * * to the end that law may replace the rule of force in the affairs of nations."

The Women's International League for Peace and Freedom urges that the Senate of the United States repeal the reservations which it attached to the U.S. acceptance of the "optional clause" of the statute of the International Court of Justice. These reservations limit the kinds of disputes which the United States will submit to the Court and even reserve to the United States the right to decide whether or not a matter under dispute is within the jurisdiction of the Court.

We believe that the United Nations will be strengthened and world disarmament facilitated when nations evidence willingness to submit all their legal disputes without reservation to final judgment by the International Court of Justice.

UNITED STATES AND RUSSIAN ATTITUDES

Senator GREEN. Are there any questions?

Senator HICKENLOOPER. Yes. Miss KLOOZ, do you consider that the rest of the world has anything to fear from the United States, like the Russian designs on territory of others, or special rights against other nations?

Miss KLOOZ. I don't believe the Russians have anything to fear from the United States.

Senator HICKENLOOPER. I don't say the Russians. Say the rest of the world?

Miss KLOOZ. The rest of the world? No.

Senator HICKENLOOPER. Do you believe that the policy of the Kremlin is aggressive?

Miss KLOOZ. Undoubtedly.

Senator HICKENLOOPER. And would you agree that the two most powerful forces in the world today are the United States and the Communist bloc?

Miss KLOOZ. Probably. I am not an authority on that.

Senator HICKENLOOPER. I am speaking of physical force.

Miss KLOOZ. Yes. I am no authority on the physical force, but probably you are right.

Senator HICKENLOOPER. Now the Russians haven't even come close to accepting the jurisdiction of the World Court, have they?

Miss KLOOZ. No, but my concern is not so much with what the Russians and the satellites do. It is rather the cases that may arise between the Western nations. For instance, France got itself into difficulty when it sued Norway because of the self-judging resolution. We might get into difficulty with any one of the Western nations, and we do a lot of business with them too, you know.

Senator HICKENLOOPER. In the past have we had any startling examples of injustices that have resulted because we haven't had action in the World Court?

Miss KLOOZ. No; I don't think the United States has, and may I say here that I differ with the former speakers in my regard for the judicial profession, the caliber of the people who serve the courts of the United States and the World Court.

I think they are people of rectitude and impartiality and fairness and I think personal rights need just as much protection as property rights.

COMMUNIST IDEA OF JUSTICE

Senator HICKENLOOPER. Would you extend that approval to the Russian judge who sits on the International Court or the Polish judge, both of whom are controlled by their Communist political ideologies?

Miss KLOOZ. That is in theory. I don't have the information before me, but I believe I have read somewhere that some of the satellite judges have decided against their own country in cases and certainly that would be the height of courage and impartiality. If you like, I will look that up and submit that.

Senator HICKENLOOPER. I don't know about those instances.

Miss KLOOZ. If you would like me to I will look that up and submit it to you later but I don't have it today.

Senator HICKENLOOPER. I don't think it is necessary at the moment. We probably can find that. But is it your opinion that justice in the Communist countries, that is, as we refer to justice, is based on human considerations, or is it based upon political expediency within those countries? In other words, are the courts controlled in those countries by political expediency, or are the justices or judges impartial and can they decide matters as they believe the equities indicate?

Miss KLOOZ. I have no authoritative information on the subject, but by hearsay, if I may quote that, there are political matters at least controlled by expediency but as far as functional matters, perhaps a divorce case or something like that, they might be fair. As I say, I have no information on the subject.

Senator HICKENLOOPER. Of course, the International Court doesn't deal with divorce cases.

I didn't mean to be facetious, but I mean the level of decisions in the International Court——

Miss KLOOZ. I thought you were referring to domestic courts in the satellite countries and Russia.

Senator HICKENLOOPER. Yes; I am referring to their whole procedure.

Miss KLOOZ. Yes, well, speaking of the International Court alone, it seems to me that the one or two instances that I referred to shows that they have given a judicial decision.

At least they have. Whether they will continue to or not, they may be swayed by political expediency.

Senator HICKENLOOPER. Do you think for an instant that a judge from Russia or from one of the strong Communist-controlled countries would stay on that bench one minute if he gave a decision that was adverse to the political expediency determined by the politicians in his country?

Miss KLOOZ. That is not my concern because that is his misfortune.

Senator HICKENLOOPER. That goes to the integrity of the Court.

Miss KLOOZ. Yes; but his is not the deciding vote.

Senator HICKENLOOPER. It could be.

Miss KLOOZ. You mean by his powers of persuasion he might?

Senator HICKENLOOPER. No. The Statute provides that they can have panels of three-court judges, and I will admit that the likelihood of this happening would not be very great. But it is entirely within the province and the authority of the Court to assign to a case, let's say, two Communist judges and one other, and a majority of that three-judge panel is considered to make the decision of the Court.

RUSSIA'S REFUSAL TO ACCEPT COURT'S COMPULSORY JURISDICTION

These things are deeply involved in human rights and the approach to human justice in this matter. Now if Russia will not accept the jurisdiction of this Court with all of its power and prestige and influence in the Communist-bloc countries, would we accomplish very much to have a third or more of the world simply refusing to abide by this, going its own way, and we, the other big center of power in the world being controlled by this Court? Would that operate to our advantage?

Miss KLOOZ. I still think it would, sir, for the benefit of the other two-thirds of the world, if they should come in and accept compulsory jurisdiction, and I do think Russia has shown in the past that it is susceptible to public opinion, and it has done some, what shall I say, revolutionary changes. By the very fact that it permitted its Premier to visit these United States it shows it is susceptible to change. We can always hope for the best, that they will eventually evolve into where they do not mistrust and fear the rest of the world so they will submit to judicial decision.

Senator HICKENLOOPER. I wish I could be as optimistic on that question as you. I am very thoroughly convinced that the kernel, the hard core, of Russian objectives has never changed one iota. They may change the frosting on the cake just a little from time to time and they have done it repeatedly as it suits their needs at the moment.

Miss KLOOZ. I defer to your opinion.

Senator HICKENLOOPER. That is not necessary. I am just expressing my own opinion. Thank you very much.

Senator GREEN. Thank you, Miss KlooZ.

Miss KLOOZ. Thank you, sir.

Senator GREEN. Is Professor Schwebel here?

Mr. SCHWEBEL. Yes, sir.

Senator GREEN. Mr. Schwebel, I went to Harvard Law School myself?

Mr. SCHWEBEL. Thank you very much, Senator.

Senator GREEN. Will you proceed in your own way?

STATEMENT OF STEPHEN SCHWEBEL, ASSISTANT PROFESSOR OF LAW, HARVARD UNIVERSITY

Mr. SCHWEBEL. I am grateful to the committee for inviting me to testify, in place of my colleague, Prof. Louis Sohn. Professor Sohn greatly regrets his inability to appear personally.

He has submitted for the record a copy of his article in the January 1960 issue of the American Bar Association Journal. My statement carries with it the general approval of Professor Sohn, as well as that of other colleagues intimately concerned with the rule of law, national and international: Profs. Milton Katz, Richard Baxter, and Roger Fisher. Strictly speaking, however, I speak for myself and naturally Harvard University bears no responsibility for my views.

This committee has had the benefit of a variety of views. The great part of the organized bar emphatically favors Senate Resolution 94. The professors agree with the practitioners. The President of the United States, the Vice President, the Secretary of State, and the Attorney General, together with leaders of both parties, all stand for the bill. Who is opposed? Mainly groups, organized to be sure, letter writers, and resolution adopters, a few newspapers, that are characterized by a common bond: the habitual confusion of nationalism with patriotism.

QUESTION OF THE STATUS QUO

To engender doubt about the desirability of Senate Resolution 94, confusion is necessary, for the law, the logic, the facts of the matter are clear. Yet the opposition to withdrawal of the self-judging amendment is there. It has to be reckoned with. The constant tendency with days of reckoning is to postpone them. It is that possibility to which I should like to address myself today. Should this committee, in response to minority opposition to Resolution 94, shelve the matter? Is the status quo really so bad; will it actually be of much consequence, one way or the other, if the question is dropped? The thrust of the resolution is to take from the State Department and return to the International Court of Justice the power to decide whether or not cases before the Court concern "matters * * * essen-

tially within the domestic jurisdiction of the United States." Why not leave what some see as "well enough" alone? It is argued that the State Department will not abuse that power. Other governments must, or should, know that. After all, the reasons for the weakness of international law goes deeper than the self-judging proviso.

A BARRIER TO MORE EFFECTIVE RULE OF INTERNATIONAL LAW

But a fundamental of that weakness is the lack of effective, compulsory jurisdiction by the International Court of Justice over international legal disputes. The question of the self-judging reservation, however resolved, of itself will not answer the problem of compulsory jurisdiction. But the reservation is a significant barrier in the way of progress toward a more effective rule of international law.

Permit me to enumerate several reasons why the status quo is profoundly unsatisfactory, why the action you take on Resolution 94 will be not just consequential, but of great consequence.

RESERVATION CONFLICTS WITH STATUTE OF COURT

First, the self-judging proviso constitutes an affront to the sanctity of our treaty obligations. The Statute of the International Court of Justice, to which the United States became a party before adoption of the self-judging clause, provides that—like any court properly so-called—the International Court shall settle by its own decision disputes as to its jurisdiction.

But the self-judging reservation in this respect conflicts with the Statute. It equally conflicts with the effectiveness of the Court, and with that deeper rule of law to which this country has been traditionally dedicated.

TEMPTATION OF RELYING UPON RESERVATION

Second, however judiciously the State Department is advised, the presence of the self-judging clause—the express will of this Senate—subjects the Department to the temptation of reliance upon it.

No criticism of the Department is meant by saying that it is not satisfactory to leave it to the Department to decide whether or not to invoke the clause, case by case. Every lawyer knows that a natural tendency in the contentiousness of litigation is to employ all the weapons you possess. At such a time, it seems more important to win the particular case than that there be a workable system by which cases are decided. And, in fact, the Department did invoke the self-judging proviso in the *Interhandel* case—a case in which the Court, by disposing of Switzerland's claim on an entirely distinct ground, accordingly indicated that reliance upon the clause was unnecessary.

RECIPROCAL NATURE OF RESERVATION

Third, however circumspect the United States may be in employing the self-judging reservation, opposing litigants may be unrestrained. As this committee well knows, the obligations of compulsory jurisdiction assumed under the Statute of the International Court are, by the terms of the Statute, reciprocal. In consequence, our own reservation can, in certain situations, be turned to our own disadvantage.

Any government that we hail before the International Court, pursuant to paragraph 2 of the optional clause, no matter what the actual terms are of that foreign government's submission to jurisdiction, can, simply by describing the dispute as one that in its view is within its domestic jurisdiction, strip the Court of jurisdiction. France, which had a self-judging reservation of its own, learned of this boom-orang effect from Norway in the Case of Certain Norwegian Loans. France has since reformed the terms of its submission to the Court's compulsory jurisdiction. We should do likewise, the more so because, as U.S. interests and investments abroad are so large, the possibility of a self-judging clause being used against us is the greater. It is the United States that has the most to lose by operation of self-judging provisions.

OTHER COUNTRIES' SIMILAR RESERVATIONS

Fourth, a half dozen governments have followed our poor example by making self-judging reservations in their own adherences to the Court's compulsory jurisdiction. Any such government, in dispute with a third government, accordingly may escape the Court's jurisdiction at will. Such governments, like that of the United States, must bear in mind that any other government they might be inclined to bring before the Court may invoke the reciprocal benefit of a self-judging proviso—a fact hardly conducive to the settlement of international disputes by legal means.

NEED FOR REGULAR PROCEDURE TO CLARIFY LEGAL OBLIGATIONS

Fifth, we want a regular procedure which can clarify the legal obligations of this and other countries. This country lives up to its legal obligations, and has nothing to fear from impartial clarification of them. Almost a hundred years ago Congress decided that, rather than consider each claim against this Government on a political basis by a private bill, it would establish the Court of Claims with compulsory jurisdiction to decide the merits of claims against the Government. We all recognize that the Government is better off being able to act in the light of a judicial determination of its obligations with respect to financial claims. We will similarly gain if we can act in the light of judicial determination of our international rights and duties. We gain far more from the establishment of such a procedure than we do by leaving disputes unresolved. For the United States to oppose compulsory jurisdiction of a court because we might lose some cases is absurd. It is as though the bankers and department stores of New York City opposed a court system because they might lose some cases. It is the solvent, law-abiding members of a community that have the most to gain from a system for the judicial clarification of their rights and duties.

SUPPORT OF THE RULE OF LAW

Sixth, U.S. declarations, official and unofficial, in support of the rule of law have a hollow ring as long as we reserve the power to be judge in our own cause. If this committee after national study and debate and its own careful deliberations fails to move to strike the self-

judging proviso, the moral position of the United States will suffer still more.

I submit that the foregoing reasons indicate why inaction is inadequate. Conversely, withdrawal of the self-judging reservation is in the interests of the United States. It would at once strengthen the International Court and enhance the stature of the United States as a world leader in the pursuit of peace.

It is the law-abiding governments that will gain most from an effective law.

While respectfully urging this committee to support Senate Resolution 94, may I draw its attention to the article by Professor Sohn I mentioned at the outset?

It, and a report of a committee of the American Society of International Law which appears in the 1959 volume of its proceedings, contain cogent discussion not only of why the self-judging clause should be withdrawn, but also of various possibilities of progress toward that end.

Thank you very much, sir.

COMMITTEE PROCEDURE

Senator GREEN. Thank you.

You say you are grateful for the committee inviting you to testify in place of your colleague, Mr. Sohn. I would like to make it clear that we did not invite you or Professor Sohn. The only persons whom we invited were the Attorney General and Secretary of State Herter. But we are very glad to have you here and I want to congratulate you on the clarity of your statement.

Are there any questions?

Mr. SCHWEL. Senator, may I just for the record say a word about the point you just made? A letter from the clerk of this committee to Professor Sohn reads:

Generally the committee does not invite private organizations or individuals to testify before it. Knowing your interest in this measure, however, you may inform Professor Schwel that he will be scheduled for a brief presentation—

and so on. This letter was sent after a telegram as I understand it, I haven't seen that text, was sent to Professor Sohn inviting him and he unfortunately had to decline.

Senator GREEN. I simply wanted to bring attention to correct the statement that you made. The situation was this: Professor Sohn had expressed an interest in appearing as a witness. When notified of the date of the hearing, he indicated he could not come but asked that you appear in his stead. The letter to Mr. Sohn was meant to clarify the point concerning invited witnesses, and to inform Mr. Sohn that he could send a substitute.

Senator Hickenlooper?

LAWYERS SUPPORTING SENATE RESOLUTION 94

Senator HICKENLOOPER. Yes; I have one or two questions now.

First I want to congratulate you on a very vigorous and forceful presentation of your particular views here, which is fully expected from a man of your ability, of course.

You say in your statement that "The great part of the organized bar emphatically favors Senate Resolution 94." On what do you base that?

Mr. SCHWEBEL. I base it, sir, on several things: first of all, on the action of the house of delegates of the American Bar Association in 1946, which objected to the so-called Connally amendment; and second, on the report of the special committee of the American Bar Association, which you have doubtless seen, which reviews the question anew, which states that in view of the fact that it reaches the same conclusion the house of delegates reached in 1946, the question need not be submitted to the house of delegates, but which exhaustively and persuasively sets forth the case for withdrawal of the Connally amendment.

Third, I base it on the statement of the Association of the Bar of the City of New York advocating withdrawal of the Connally amendment; and fourth, on the statement of the American Society of International Law, which brings together international lawyers from all parts of the country, adopted at its last annual meeting, which unanimously stood in favor of withdrawal of the Connally amendment.

PEOPLE OPPOSING THE RESOLUTION

Senator HICKENLOOPER. I notice some rather sharp criticism which you have directed here to people who oppose this resolution. You said:

Who is opposed? Mainly groups, organized to be sure, letter writers and resolution adopters, a few newspapers, that are characterized by a common bond: the habitual confusion of nationalism with patriotism.

Do you feel that these groups don't have a right to organize if they have convictions along this line and oppose this resolution?

Mr. SCHWEBEL. No; of course I don't feel that, sir. I think they have every right to organize.

Senator HICKENLOOPER. Have you in any way had access to the letters that have come in pro and con on this resolution to Members of Congress?

Mr. SCHWEBEL. No; I have not been so privileged, apart from press reports of them.

Senator HICKENLOOPER. I can assure you that if there is an organized movement in connection with this resolution, that in my mail the directed, organized, and the dictated suggested statements have come from certain groups who seem to be highly organized for the repeal of this amendment to a far greater extent than the mail and literature which I have received on the other side, which has been quite voluminous also but seems to be individual reaction rather than organized group reaction.

I merely wanted to make that clear. I certainly have no opposition to either side organizing. But when one side is so openly organizing to get certain of its associated groups to write their Congressmen in volumes, I can't find it in my own heart to criticize the other group if they attempt to organize a little bit to express their views.

Mr. SCHWEBEL. Sir, as I indicated, I have no objection to organizing, of course, and I am delighted to hear that that is the way your mail is running.

DEFINING THE RULE OF LAW

Senator HICKENLOOPER. Professor Schwebel, you talked greatly in here about the rule of law, that it is desirable, and I think you find no objection here as far as I know by anybody on this committee. And I think you will find that I agree that that is the universally accepted opinion of the American people. But what is law? What is the rule of law? Is it composed of a body of rules developed by the people that is by way of statute or by way of formal declaration, or is law composed of the arbitrary and perhaps whimsical decision of judges? Now what is law?

Mr. SCHWEBEL. Well, that is an important——

Senator HICKENLOOPER. You are an expert in this field and I am asking you for advice. What do we mean when we talk about the rule of law?

Mr. SCHWEBEL. I am not an expert, Senator, and that is a portentous and difficult question and I don't think I can dispose of it briefly or conclusively.

Senator HICKENLOOPER. If you are not an expert I don't know who is.

Mr. SCHWEBEL. No; there are people who are far more expert. But I would say this: That the rule of law as we know it within the United States, of course, is composed of the Constitution, of statute and of the common law as well as of administrative regulations and so on that are laid down pursuant to law. Now judges are called upon to interpret that law and judges are human and their interpretations may vary.

Senator HICKENLOOPER. Do judges under our concept make law or should they interpret law?

Mr. SCHWEBEL. Judges are supposed to interpret law, but the process of interpretation unquestionably leaves latitude for judicial construction of law.

I think that is generally acknowledged as we can see by the history of our own Supreme Court.

Senator HICKENLOOPER. Now, in the United States, when judicial decisions are such as to offend the views and opinions of the people as expressed to their legislative bodies, the people can correct that; can they not?

They have the power to correct what they believe to be an irregular or an improper interpretation of the law by the judges. That is the general rule; is it not?

Mr. SCHWEBEL. Very generally; yes. Not immediately from many years of decisions of a court which stand which may not be particularly popular. But in due course popular opinion——

Senator HICKENLOOPER. I am speaking about the majority. I am not speaking about the fact that it always is changed but I am speaking about the fact that the authority is lodged in great measure in the people through their legislative representatives to make a declaration which is in opposition to an interpretation of law by the judges, an interpretation which the people don't like.

They can do that. They have the authority.

Now when I asked you what is law, you rather prefaced your definition of what is law by saying, "Well, in the United States this is our concept of law."

Do you know what the concept of law is in Afghanistan? That is perhaps a rather nebulous question. But do you know what concept of law is in Russia? Do we know what the concept of law is in Ghana? In other words, we have many concepts of law in the world, do we not? So if we define what we think is law in the United States, and if we are committed to the idea that our concept of law in the United States is sound and just, then why would we submit ourselves to the interpretation by a court which is not controlled by statute in any way and made up of 15 judges, many of whom do not have the background of our legal system, many of whom do not have our concepts of equity as between individuals, and many whose whole makeup is not necessarily based upon the same concepts as ours?

I mean, aren't we walking on pretty dangerous ground when we submit ourselves to that kind of a forum?

Mr. SCHWEBEL. I would respectfully say, sir, no, not nearly as dangerous on the ground on which we walk by not having a forum to settle international disputes.

If there were no other countries in the world but the United States there would be no need for such a forum. But there are other countries; there are international disputes; there are needs for settling those disputes. They can be settled by war or by negotiation, by law. The more we can settle by law, the better.

DEFINING THE COURT'S JURISDICTION

Senator HICKENLOOPER. What basis or guidelines does this International Court have for determining the issues that may come before it except the broad outline contained in the Charter of the United Nations?

Mr. SCHWEBEL. Sir, it has in article 38 of its Statute, which is appended to the Charter, a clear-cut definition of what it shall apply in the determination of its disputes:

The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: (a) international conventions * * * ; (b) international custom, as evidence of a general practice accepted as law; (c) the general principles of law recognized by civilized nations; (d) subject to the provisions of article 59—

an article which we might discuss if you would be so inclined, sir—judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

Senator HICKENLOOPER. Isn't that a rather nebulous body of rules? Is there any authority that can write specific statutes, that can clearly define the limitations of this court or its jurisdiction?

Mr. SCHWEBEL. Yes, sir.

Senator HICKENLOOPER. Or do they merely dip into the political associations of the past between nations and choose here and there and the other place what they believe to be custom and what they believe is their own sovereignty—and I submit it is their own sovereignty—to be applicable to a particular case? Is there any combination of either decision or statute which litigants can look to, let's say, prior to the time they commit some act or do something or propose to do something so that they can have any reliance upon what is proper from their standpoint or not?

In other words, can they look up and see whether you can take or whether you can't take an action with some reliance?

Mr. SCHWEBEL. Well, sir, if I may say so, that is a fundamental and altogether justified question to which I think the answer is emphatically "Yes." If I may so, I teach international law and I am constantly looking it up, and I can supply innumerable references as to places where one finds such law.

It may not be in "Shepard's Digest of Cases" but it is law and it exists. You ask if states can come together to make such law. Of course they can. They do and they make it in treaties, and there are hundreds and hundreds of treaties, including the most fundamental treaty now in existence, the United Nations Charter. You ask if there is any reference to custom——

BASIS FOR MAKING TREATIES

Senator HICKENLOOPER. Just on the question of treaties, are treaties based on equity or are they based in the main on political expediency of the moment?

Mr. SCHWEBEL. I think it depends on the treaty in point, sir.

Senator HICKENLOOPER. Is there any rule by which a treaty is drawn that it should contain certain provisions and should not contain other provisions or is it a matter of agreement between nations based, upon, let's say, primarily political expediency of the moment?

Mr. SCHWEBEL. Sir, I think that all law, treaty law, national law is, if it is to be meaningful and consequential at all, based upon a principal desire to achieve something.

If you want to call that political, yes, then treaties are political.

BASIS OF LAW

Senator HICKENLOOPER. Then a great bulk of the reservoir of guidance which this Court would have might very properly be assumed to be precedence based upon political expedience, political action of the past, and not necessarily equities between individuals or human beings as we conceive the basis of our law?

Mr. SCHWEBEL. Well, any law may or may not reflect equity. It need not necessarily do so. In the general course of human events, we have hopefully believed that it does, that our national laws do and our international laws.

Senator HICKENLOOPER. We intend for laws to reflect equity, do we not?

Mr. SCHWEBEL. Right, sir, and I submit that if you examine the body of international law as it exists today, for example in this United Nations Charter with which you are familiar, you would agree that the principles there set forth are equitable principles.

Senator HICKENLOOPER. Of course, they are equitable principles. They are very high sounding principles, and so far as I am concerned, I am willing to say that I thoroughly approve of the objectives and the purposes and the principles set out. It is the question of the implementation of those principles that is bothersome.

Now, we are all against sin, of course. But what is sin, and what is not sin sometimes is a question of rather great dispute. And we are all for justice, but this fellow living in Timbuktu may not have the same

basic concept of justice as somebody living in England or Norway or someplace else. The thing that bothers me about this is not that I fear the principle of a world court. I am thoroughly agreed that it would be so desirable if we could have an international legal system that had clarity and understanding and a common basis of approach. But as the situation stands now, it is difficult for me to see where this is anything but a manmade sovereign, this Court.

Mr. SCHWENKEL. A manmade what?

Senator HICKENLOOPER. A manmade sovereignty. When I say "sovereignty," I am not speaking of the physical political operation, but I am speaking of the sovereignty of the decision of this Court. There is no appeal from it; there is no specific control over it. We have trouble enough in this country, in the Supreme Court very often making decisions that great segments of our country don't agree with and think are completely wrong and think are completely contrary to the basis of the law.

But we happen to have a common heritage and a common background which rather compels us to obey law. That is our tradition. We obey law. There are countries where they don't. They get the stiletto or the six-shooter out and they take the law into their own hands very often if they don't like what goes on and they do the same thing with elections. Thank God they don't do it here, but I can't get away from the idea that this Court, as it is set up now, is a rather nebulous body of guidance, and that it becomes really an autonomous body, with no appeal, no control over it other than the fact that we can get out of the compulsory jurisdiction by denouncing it or by notice eventually that we want to withdraw from it.

But meanwhile we will at least morally be bound by any decisions which we may think are not good for us and which we might resent very greatly. I can't see the basis upon which this Court can act except through the combined or the majority opinion of the judges which very often might be reflected by their own particular backgrounds and training, for guidelines.

Mr. SCHWENKEL. Well, sir, I won't say that I wholly disagree with you, but I substantially venture to disagree with you. I do agree that there is much vagueness in international law. There is a lot in domestic law too but there is more in international law, no question about that. I do think the law can be found. I do submit that if one fairly and objectively reviews the record of the Permanent Court of International Justice, the predecessor of the present Court, and of the International Court of Justice, one can only reach the conclusion that the Court has acted as a genuine judicial body which has been careful of national rights, has usurped no state's national rights or domestic jurisdiction, which has not applied itself by whim or arbitrary manner, and in fact is a court which compares very favorably with most of the national courts of the world.

HUMAN ELEMENT OF THE INTERNATIONAL COURT

Senator HICKENLOOPER. Don't misunderstand me in any way. I would not disparage the personal integrity of most of the members of the Court. I would question the personal integrity of those men who represent the Communist countries because I am convinced that under

their legal system, the legal system is completely the tool of political determination, and they are subject to that control.

But most of the justices, as individuals, as they sit there now, I think are capable people and I think they have an interest in doing the job as judges that would be at least to the satisfaction of their own consciences.

But the Court, after all, while it is an institution, is still human, and we don't know what it would resolve into itself 10 years from now or in the future, unless we have some sort of delimitation on its very clearly human limitation, on its authority and on its procedures, and a clear and reliable body, let's say, of statutes of one kind or another. And how that could be acquired, I am not sure. I don't know.

An ideal way perhaps might be if we gave the United Nations as a legislative body the authority to pass innumerable statutes which would be binding on the Court in their procedures. But until such time as we do have something along that line that really controls this Court, that is, controls the latitude of its actions, I think we should consider this very, very carefully before we just surrender to the decision of 15 men.

Mr. SCHWEBEL. Sir, I would agree with you—I'm sorry.

Senator HICKENLOOPER. We are all willing to surrender to the decision of statute, let's say. Once a statute is passed, our general tendency is to say that that is the law. We may not like it, but we have to obey it, but the machinery and mechanism for writing statutes is far different from the whimsy of the Court or individuals.

RISKS OF LITIGATING INTERNATIONALLY

Mr. SCHWEBEL. Sir, your last remarks, if I may say so, bring to mind one of the suggestions which Professor Sohn makes in the articles to which I have referred, and that is that the self-judging proviso be withdrawn only as regards the interpretation of treaties, this going to meet the point you make that the treaties set out the statutory law most clearly.

I think that would be a progressive step, but I don't think it would be as progressive a step as is needed. I entirely agree with you, sir, that there are some risks involved in litigation. Every lawyer knows there are risks in litigation.

My submission is that the risks of litigating internationally are far less than the risks of disputing internationally outside the court of law, and we must balance these two desirables.

FORMATION OF COURT CHAMBERS

Sir, I wonder if it wouldn't be impertinent if I referred to a remark you made in connection with the remarks of an earlier witness, because if my reading of the Statute is correct, I believe that for one rare instance you fell into error.

Senator HICKENLOOPER. I have been in error before, so it would not be unique.

Mr. SCHWEBEL. You suggested, if I understood you correctly, that the Court could form a chamber upon which the Communist judges could have a majority, and that this chamber could render a decision which would be binding upon the United States, and that therefore

the views of the previous witness that we really ran little danger of that kind, since there were 15 judges, relatively few of whom would be Communist, were not sound. But I think, sir, that if you will read the text of article 26 of the statute, you will note that paragraph 2 of that article does indeed provide that the Court may at any time form a chamber for dealing with a particular case, but it further provides:

The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties—

and it still further provides in paragraph 3 that:

Cases shall be heard and determined by the chambers provided for in this article if the parties so request.

Accordingly no such chamber could be formed to render a decision upon a dispute in which the United States was a party unless the United States so requested.

Senator HICKENLOOPER. Yes; I think that is true.

Well, having fallen into the error to whatever extent it is an error, I shall now fall out of it and I thank you for calling my attention to article 26.

I think that is all, Mr. Chairman.

PANAMA CANAL AND THE COURT'S JURISDICTION

Senator GREEN. Senator Humphrey, do you have any questions?

Senator HUMPHREY. I merely want to ask one question that may have been answered.

Did you comment, Professor, upon the situation that is brought to our attention from time to time relating to the jurisdiction of the Court over our rights in the Panama Canal?

Mr. SCHWEBEL. No, sir; I haven't.

Senator HUMPHREY. I am sure you are aware that one of the arguments that is made against the repeal of the so-called Connally amendment is to the effect that if we are to relieve ourselves of this self-judging provision, we could find ourselves in litigation before the Court relating to our use of the canal and the possibility of a decision of the Court internationalizing the canal without any regard to our rights under the treaty which granted us the control over the facilities of the canal, for all practical purposes, actual full control over the Canal Zone.

What is your observation as to this argument?

It is one that has been used repeatedly. I was asked about it when I was a witness before the committee. I felt from my own observation that the language of the treaty was adequate to protect all of our rights in any fair court. But I am not an expert. I am not an international lawyer or a student of international law, and I would appreciate your observations.

Mr. SCHWEBEL. Thank you, Senator. My views are entirely in accord with those I understand you to have expressed. First, I would frankly say at the outset that the question of the Panama Canal might very well be an international question, and one not within our domestic jurisdiction by the fact that it involves international treaties, and our rights on foreign soil, which have been, at least to us, under particular arrangements over those treaties.

However, if we were to say that this was a question of domestic jurisdiction, assuming that the Connally amendment were not repealed, I think this would be a flagrant abuse of objectivity and of legality, and I hesitate to think that the United States would ever take such a step even if it retained the Connally amendment.

Now let us assume that the United States, as it normally does, would take a lawful position toward such a dispute and would permit it to come before the Court whether or not the Connally amendment were present. There I entirely agree with you that my understanding of the treaty provisions in effect is such that those treaty provisions would not admit of any conceivable interpretation that would damage our fundamental interests.

Senator HUMPHREY. Are you saying that with reference not only to our interests but our rights under the treaty?

Mr. SCHWEBEL. Exactly. I think the treaty is altogether clear as to our rights, at least as to the essentials of them insofar as the legal document itself is clear, although there evidently is some room for dispute. More than that, this treaty regime has existed for several decades now, and has a body of practice and recognition by other States behind it, Panama and other States included, which would constitute a body of customary international law, so that on two grounds it is difficult for me to see how we would run any risk in a case before the International Court. And I think it most unlikely that any State would want to run the risk of having our rights reaffirmed by the Court by bringing a case, if such a country were inclined to challenge our rights.

Senator HUMPHREY. Did Dr. Sohn comment upon this particular case in his article? Do you know?

Mr. SCHWEBEL. I believe he may have.

Senator HUMPHREY. I have a very high regard for Dr. Sohn. I was just wondering if he made any examination of it. This is a matter that is referred to so often that I feel that it is important that you gentlemen who are students of international law, the whole history of international justice, should spread upon the record so to speak or in the proceedings as much information as we can get relating to a rather unique set of circumstances such as the treaty which is with the Republic of Panama over the Panama Canal. Of course there is a lot of history about how we got the Canal, but I gather we don't want to go into that.

I will settle for the fact that we have the rights.

Mr. SCHWEBEL. Yes, sir. I have just glanced at Professor Sohn's article. It does not touch upon the Canal, though it is a matter I have discussed with him, and I believe I have fairly expressed his views just now. The report of the special committee of the American Bar Association does deal with this question of the Panama Canal, and I think most effectively, and I am confident that report is before you.

Senator HUMPHREY. May I ask Mr. Marcy if the report of the American Bar Association has been made a part of the printed record?

Mr. MARCY. Yes, sir.

RECIPROCAL NATURE OF RESERVATION

Senator HUMPHREY. Just one final point. Do I understand that under our reservation clause, the principle of reciprocity applies?

Mr. SCHWEBEL. Yes; you understand that correctly. Not only under our terms of adherence to the Court's statute, but by the terms of the Statute itself, all declarations submitting to the Court's compulsory jurisdiction are reciprocal whether or not the country in question says so. I think such a clause in our submission is redundant. It does no harm. It does no good. Most countries have them.

Senator HUMPHREY. Now we are a creditor nation. We have a tremendous number of investments, vast sums of money overseas. We have both public and private investments, both public and private claims. We have thousands, hundreds of thousands, of Americans traveling overseas becoming involved in a multitude of activities, and occasionally there are matters of the denial of rights of our citizens or the abridgment of rights or sometimes a citizen's activities are brought into question by courts in other lands or law enforcement officers.

What I am getting at is this: In light of our preeminence as a trading and commercial nation, and as a nation of travelers—we have far more tourists than any nation in the world—and with our great overseas investments, both public and private, do I understand correctly that because of the Connally amendment or this reservation, so to speak, this self-judging reservation, that in case we want to go to the Court of International Justice on a claim, that the defendant in that instance, when we were the plaintiff, could say, "Look, we just don't want to be before the Court. We claim the rights that you claim. We claim self-judging rights. We claim this is within our domestic jurisdiction." Is that right?

Mr. SCHWEBEL. Exactly. That is wholly right.

Senator HUMPHREY. In other words then, what we have done is to design, for what we thought was our protection, a device which can be used as an escape hatch or a protection for other countries which might be brought before the Court on the basis of what we believe is a just claim for our country or American citizens?

VALIDITY OF SELF-JUDGING PROVISIO

Mr. SCHWEBEL. Precisely, and there is a further point and that is the one that has been made so cogently by Judge Sir Hersch Lauterpacht in his opinion in the *Norwegian Loans* case that a self-judging proviso—he wasn't there dealing with the so-called Connally amendment but rather with a comparable French reservation—that a self-judging proviso rendered the whole of the submission to the Court's jurisdiction invalid and provides no basis for it whatsoever. And he makes two points in support of this view:

First, that a self-judging proviso clearly conflicts with the terms of the Statute. Article 36(6) of the Statute provides:

In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

It is clear that a self-judging proviso violates that provision of the Statute.

Second, Judge Lauterpacht submits that as a general and inescapable principle of law, an obligation in which the obligor reserves the power ultimately to decide whether or not he is obliged, is not a legal obligation at all.

I think a moment's reflection will show that that is certainly the case.

STATEMENT OF CATHOLIC ASSOCIATION FOR INTERNATIONAL PEACE

Senator HUMPHREY. I asked Mr. Marcy a moment ago for the communication from the Catholic Association for International Peace. I read in the press yesterday or this morning that the Catholic Association for International Peace had submitted a communication to the committee relating to Senate Resolution 94 for the repeal of the Connally amendment.

It was signed by Rt. Rev. Msgr. George G. Higgins, executive secretary, and if the committee has no objection, I should like to have entered at the conclusion of the testimony of the present witness the statement by the Juridical Institutions Committee of the Catholic Association for International Peace in support of the repeal of the Connally amendment reservation in the declaration of adherence by the United States to the jurisdiction of the International Court of Justice.

It is a very cogent and powerful statement and one with which I thoroughly agree, and I am very grateful for the statement. Has it been entered in before, Mr. Marcy?

Mr. MARCY. No, sir.

Senator HUMPHREY. May I ask therefore that it be included at the appropriate point in the record?

Senator GREEN. Do you offer it now?

Senator HUMPHREY. Yes, sir.

Senator GREEN. Without objection it shall be made a part of the record.

(The statement referred to appears on p. 208.)

SUGGESTED DELETION OF OTHER RESERVATIONS

Senator HUMPHREY. I thank the Chair.

Thank you, Professor Schwebel. I am very much impressed with your statement. I have been listening and reading at the same time.

Mr. SCHWEBEL. Thank you, Senator. I wonder if I may add one last word, and I appreciate your graciousness, sir, in hearing me this long.

Senator CHURCH. There are going to be some more questions, so this won't be the last word.

Mr. SCHWEBEL. I see. Then I will make it a brief word. While I so warmly support your resolution, I would support the views of the previous witness that certain portions of it are unnecessary. I don't think they do great harm, but I think they are redundant, and that our submission, if it were amended in the way you suggest, would be better amended if on page 2 of the resolution points (a), (b), and (c) were deleted. As it has been pointed out, (a) is covered by article 95 of the United Nations Charter; (b) disputes with regard to matters which are essentially within the domestic jurisdiction of the United States, is in fact covered by the terms of the Statute which restrict its decisions to international disputes, as contrasted with domestic disputes; and (c) which has been adopted literally from our existing declaration is a most unclear proviso which has been generally ad-

judged to be unhelpful, and in that respect I would respectfully refer you to the testimony and writings of Professor Briggs.

Senator HUMPHREY. Do you have a copy of the resolution?

Mr. SCHWEBEL. I do, sir.

Senator HUMPHREY. You say starting on line 9, page 2, to strike the provisions from there down through line 20?

Mr. SCHWEBEL. Yes.

Senator HUMPHREY. You feel that those are unnecessary?

Mr. SCHWEBEL. Exactly. And I think (c) leads to a certain confusion. I don't think that (a) and (b) do any harm because they simply repeat provisions which are found in the charter of the United Nations and the Statute of the Court.

Senator HUMPHREY. May I say that I have no pride of authorship at all? This was prepared in cooperation with the Library of Congress and the Department of State. They take no responsibility for it. I don't mean that. I used what I thought were the best lawyers available. We find out around here that a Senator is fortunate if he ends up with his number on the bill sometimes; he does even better if his name isn't left out. If he ends up with the number on the bill and the preface, the initial statement, he is mighty lucky. So just a slight degree of trimming would be very appropriate I am sure and maybe very helpful.

Senator GREEN. Are you finished?

Senator HUMPHREY. I am indeed, Mr. Chairman. Thank you.

DEFINING A COURT'S JURISDICTION

Senator GREEN. Senator Church?

Senator CHURCH. I think your testimony has been very helpful this morning. I think particularly that the exploration of some of the fundamentals involved here that has taken place as a result of the questions put to you by Senator Hickenlooper has been of service to the committee. I would like to explore some of those fundamentals a little further with you.

Where a domestic court is concerned, here in Washington or up in Boston, is it not the normal procedure for that domestic court to determine its jurisdiction in any case that is brought before it if the question of jurisdiction is raised?

Mr. SCHWEBEL. Yes, Senator, it is the normal procedure of such courts, and to my knowledge of any court worth the name anywhere in the world.

Senator CHURCH. Now, when you say any court worth the name, are you not saying that if the litigants brought before any court were able to discharge the court of jurisdiction at any point during the proceeding for any reason that seemed sufficient at the time to the litigant, the court would not in fact be a court and you would have no real method of law enforcement; isn't that true?

Mr. SCHWEBEL. Yes, sir; I think it is wholly true.

Senator CHURCH. So what we are attempting to do now in Senate Resolution 94 is to give the World Court the same power to decide jurisdictional questions that we normally give other courts?

Mr. SCHWEBEL. Right.

RESERVATION'S EFFECT ON JURISDICTIONAL POWERS OF THE INTERNATIONAL COURT

Senator CHURCH. Now, speaking very carefully and logically, as I know you will, if Senate Resolution 94 were to be approved and we were to relinquish our right to judge for ourselves the jurisdiction of the World Court in any given case, would that in fact enlarge the powers or the jurisdiction of the Court, or would the powers and jurisdiction of the Court—and I am speaking now of the jurisdictional powers of the Court—remain the same, inasmuch as they are established by the Statute under the charter that sets up the Court.

Mr. SCHWABEL. I think that effectively the withdrawal of the self-judging proviso would enlarge the powers of the Court in this sense: that the proviso now purports to take from the Court in violation of the Court's Statute a power which is given to the Court by the Statute, in article 30(6). I submit that the present terms of the U.S. adherence to the compulsory jurisdiction of the International Court are a breach of our treaty obligations and a breach of the Statute.

Withdrawal of the Connally amendment would bring us into line with our international obligations, would recognize the Statute of the Court and its proper jurisdiction, and would treat the Court as a court properly so-called.

Senator CHURCH. But the jurisdiction of the Court over international disputes as established under the charter of the United Nations would not be affected as such, would it?

Mr. SCHWABEL. No, certainly not. The Court would still be restricted to deciding international disputes alone. It would have no jurisdiction to decide a domestic dispute.

Senator CHURCH. And in this sense the jurisdiction of the Court would not be affected by the passage of Senate Resolution 94?

Mr. SCHWABEL. That's right.

ENFORCEMENT OF DECISIONS OF DOMESTIC COURTS AND THE INTERNATIONAL COURT

Senator CHURCH. Now Senator Hickenlooper asked some very penetrating questions, I thought, about law and the nature of law. When I was at Harvard Law School I was taught—

Senator HICKENLOOPER. What do we have here, a conspiracy with Harvard Law School? I will withdraw that question.

Senator CHURCH. Actually not, Senator, inasmuch as I hold my degree from Stanford.

I was taught that law is the arm of the government, and the method by which government governs, and that in any real sense of the term, there is no law except within the context of government with the power behind the government to back up and enforce the law. Now is that your understanding of law and its real meaning?

Mr. SCHWABEL. No; it is not. I hesitate to suggest that anything you might have been taught at Harvard Law School was inaccurate, but may I characterize it as perhaps not far reaching enough in that single respect.

The definition of law as you have given it is a sound definition, a normal definition, but I think if we will take account of the fact that

in international law we speak of states, and that in the national law we often speak of sovereign units, it will become apparent that law is law even when there is no sheriff invariably to enforce it. What sheriff enforces the decision of the Court of Claims against the U.S. Government? But it is law.

Senator CHURCH. Now I think that we are getting at the same point in different ways. What you are saying, if I understand your answer, is that there is a difference between international law as we view it and domestic law within any given country, and the difference is that normally where domestic law is concerned, there is the power of government to back it up. Where international law is concerned, the situation differs because international law does not occur within the limits of any sovereign state; is that not so?

Mr. SCHWEBEL. Senator, I am in substantial agreement with you but not in entire agreement because I don't think this characteristic to which you point of international law, which is undoubtedly a characteristic of it, is restricted to international law.

It applies within domestic systems as well as to the actions of government.

Senator CHURCH. I am speaking generally. I think you could find some illustrations within the domestic system. But I am speaking generally of the character of domestic law as opposed or contrasted with the general character of international law.

It seems to me that what is involved here is really a question of applying judicial procedures to the settlement of international disputes. Assuredly, if you have a domestic court that decides a given dispute, and then one litigant refuses to abide by the decision of the court, the court has the power to enforce its decision through the sheriff or through the police or through the appropriate law enforcement agency. And if that litigant continues to refuse, there are penalties that the court can impose. The court can fine the litigant, the court can imprison the litigant, until the litigant does comply; isn't that so?

Mr. SCHWEBEL. Yes.

Senator CHURCH. That is the situation where domestic law is concerned, because there is the power of government behind the court.

APPLYING THE JUDICIAL METHOD TO SETTLEMENT OF INTERNATIONAL DISPUTES

Now in the international arena it seems to me that what we are attempting to do with Senate Resolution 94 is to assist the World Court in exercising the jurisdiction given it under the charter so that we can apply the judicial method to the settlement of disputes that may arise between nations. Isn't that correct?

Mr. SCHWEBEL. Yes, I think that is wholly correct.

Senator CHURCH. Now I think it is important that we follow this because there are many dangers that are envisioned here that the opponents of this resolution point to, and therefore, I think it is important that we follow the thread of this reasoning.

GUIDELINES FOR THE INTERNATIONAL COURT

You were questioned a few minutes ago about the principles that this International Court would use in applying the judicial method,

and you said that there was a body of international law that is pretty well known and established that this Court would look to, that there are a series of treaties that this Court would look to in deciding cases that come before it.

Now isn't a treaty comparable in many ways to a contract?

That is to say, a contract between two individuals might be the substance of a case brought before a domestic court. And a treaty between two countries might be the substance of a case brought before the World Court. Is that not so?

Mr. SCHWEBEL. Certainly.

Senator CHURCH. And in our domestic law a contract is enforceable by its general terms as a treaty would be enforceable between two countries, generally speaking.

So I think the analogy here is accurate enough and certainly it seems to me that when you take into consideration the treaties and the general body of international law that has grown up over the years, there is in fact some set of legal principles that could and in fact do give the necessary guidelines to this international court, so that it isn't actually operating in a vacuum.

Mr. SCHWEBEL. I agree. It is not operating in a vacuum and there are such principles in bodies of law.

WHAT IF THE INTERNATIONAL COURT SHOULD OVERREACH ITS JURISDICTION?

Senator CHURCH. It has been suggested that there are dangers in this resolution, that if we repeal the resolution and its self-judging powers, the Court might then overreach its jurisdiction.

In other words, it is said that if we trust the Court to decide questions relating to its jurisdiction, the Court might begin to overreach its jurisdiction and get beyond the field of international disputes and into the field of domestic disputes. That has been a question that has often been raised.

Well, it seems to me that if this were to happen—I don't think it likely to happen, because it seems to me that all the members of the court of justice are as jealous about their sovereign and domestic prerogatives as the United States of America—but if this were to happen, don't you believe that the member nations, jealous of their own prerogatives, would quickly undo that by simply declaring the Court to be unreliable in that it had invaded domestic matters and simply withdrawing from it?

Mr. SCHWEBEL. It might well be. I think the Court which has displayed in the past scrupulous care not to offend national sensibilities would take care where an issue of domestic jurisdiction would be concerned, and would be as you say most unlikely to make such a decision, and it would anticipate that if it did so the reactions would be most adverse.

Senator CHURCH. So the member states themselves have a very real and direct governing influence over this Court inasmuch as if it does attempt to overreach its jurisdiction, it is within the power of the member nations to withdraw; is it not?

Mr. SCHWEBEL. Yes, it is within their power to withdraw.

QUESTION OF ENFORCEMENT OF COURT'S DECISIONS

Senator CHURCH. Now let's take this one step further, because these dangers are often pointed to. Let's just suppose that this Court, unlikely as it may be, were to render a decision in a given case that was so adverse to the vital interests of one of the litigants that that country found it totally unacceptable.

Would this Court have a sheriff that could put that country in jail?

Mr. SCHWEBEL. No, it would not. The winning party would have a right of political appeal under the United Nations Charter to the Security Council of the United Nations for enforcement action, but the Council would not be bound to take enforcement action in response to that appeal.

Of course, any action of the Council would be subject to its formal rules of procedure. So as regards the United States in particular, the United States could veto any action in the Security Council which it did consider adverse to its interest.

Senator CHURCH. I think that these points are very important to get on the record, because there is much argument to the effect that if the Senate were to approve Senate Resolution 94, we would be taking dire risks, that if the Court were to run amuck, so to speak, it could jeopardize the vital interests of the United States. I appreciate your testimony very much.

Mr. SCHWEBEL. Thank you.

SUGGESTED ELIMINATION OF OTHER RESERVATIONS

Senator HUMPHREY. Mr. Chairman, may I make just one suggestion? In a very helpful manner, Mr. Schwebel called to my attention some of the language that he thought was a bit redundant. One of the committee staff members present helped in the drafting of this resolution, and I am going to respectfully suggest that possibly you and Miss Sames, who is here with us, who was very helpful to me, might discuss this privately so that the resolution might be appropriately amended.

Would you be willing to do that?

Mr. SCHWEBEL. Yes; it would be a privilege.

Senator HUMPHREY. Thank you very much.

Your help is very significant and I know we will want to make any corrections that are necessary. I want to thank Senator Church for that cross-examination. It seems to me it answers some fundamental questions.

Senator GREEN. Are there any further questions?

Thank you very much for your explanation of the situation. You have been very helpful.

Mr. SCHWEBEL. Thank you.

(The statement of the Juridical Institutions Committee of the Catholic Association for International Peace referred to above follows:)

CATHOLIC ASSOCIATION FOR INTERNATIONAL PEACE,
Washington, D.O., February 16, 1960.

Hon. J. W. FULBRIGHT,
Chairman, Senate Foreign Relations Committee,
Senate Office Building, Washington, D.O.

DEAR SENATOR FULBRIGHT: May I direct your attention to the enclosed statement prepared by the Juridical Institutions Committee of the Catholic Associa-

tion for International Peace, in support of Senate Resolution 94 for repeal of the Connally amendment.

We respectfully request that this statement be included in the testimony presented to your committee in the current hearings on this resolution.

With every good wish, I remain

Sincerely yours,

Rt. Rev. MGR. GEORGE G. HIGGINS,
Executive Secretary.

STATEMENT IN SUPPORT OF REPEAL OF THE CONNALLY AMENDMENT RESERVATION IN THE DECLARATION OF ADHERENCE BY THE UNITED STATES TO THE JURISDICTION OF THE INTERNATIONAL COURT OF JUSTICE

(By the Juridical Institutions Committee of the Catholic Association for International Peace)

The Juridical Institutions Committee of the Catholic Association for International Peace wishes to endorse Senate Resolution 94, which removes the self-judging reservation from the U.S. adherence to the Statute of the International Court of Justice. We do not feel that it is necessary to review at length the arguments in favor of repeal, since the Senate Foreign Relations Committee has already had the benefit of expert testimony on the technical details involved. We would, however, like to emphasize several points which we think should be considered seriously by the Congress.

First, it should be noted that the hearings before the Senate Foreign Relations Committee constitute the first real investigation into the subject by the Congress since the Connally amendment was introduced during the floor debate on adherence to the International Court of Justice in 1945. It may well be that the Connally amendment was justified at that time by understandable anxiety over the possibility that the Senate might reject the International Court of Justice, as it had the Permanent International Court of Justice, unless a reservation of this kind were made. But it is believed that our present Congress should be able to deal with this matter on its merits, without the pressures which existed when the fate of U.S. participation in the International Court of Justice was hanging in the balance.

Secondly, we would like to emphasize that although removal of the Connally amendment is a much-needed step in the right direction, it is in itself a relatively modest step. It simply places the United States in the same position as the majority of the other states adhering to the Court. Now it is well known that the Court has not in fact proved to be some kind of an omnipotent supranational tribunal which constantly seeks to interfere in domestic matters. On the contrary, following the spirit and letter of article 2, section 7 of the United Nations Charter and the general concept of domestic jurisdiction in international law, the Court has shown a marked conservatism in matters of jurisdiction. On the record its activities represent only the beginning of a very limited system of international adjudication. The least that the United States can do is to participate fully in this system. Legally, repeal of the Connally amendment, therefore, is not a radical move—a fact unfortunately blurred by excessive claims of its extreme proponents as well as of its opponents. But it is an important move politically and psychologically. The Court is in need of the confidence of the states of the world and most particularly of the confidence of the Government and people of the United States. Without this confidence there is little hope of strengthening its legal prerogatives.

This brings us to a point which the members of our juridical institutions committee consider to be most important. The much-discussed movement toward the rule of law in the international community cannot succeed if it is limited to mechanical, technical devices such as removal of the Connally amendment. Even with the Connally amendment, the United States could utilize the International Court of Justice to a greater extent. And even if the Connally amendment is removed, there is no guarantee that the United States will submit more frequently to international adjudication, any more than the other states which have had no such reservations. Repeal of the Connally amendment will help, but what is needed is a different attitude in the Government and among the people of the United States toward the possibilities of international adjudication.

It is respectfully suggested that the Congress, which has added to its many functions the role of educating the public on critical issues, might well consider wide distribution of studies on the subject of international adjudication

similar to those which it has had prepared on other questions such as defense, foreign aid, and the like. In any event, the CAIP Juridical Institutions Committee, believes that this question of the Connally amendment is only the beginning. As with domestic institutions and laws, international law and organization cannot provide mechanical, self-operating solutions to the world's problems. Human beings make institutions work, on all levels of society from the local to the international, and until the individual statesmen and citizens in this country know more about and have more confidence in the institutions and principles of our international society, the rule of law throughout the world will remain rather meaningless.

Senator GREEN. The next witness is Dean Clarence Manion of South Bend, Ind. We welcome you, sir.

**STATEMENT OF DEAN CLARENCE MANION, SOUTH BEND, IND.,
VICE CHAIRMAN, "FOR AMERICA"**

Mr. MANION. Senator Green, Senator Hickenlooper, and members of the committee, I am Clarence Manion, a practicing lawyer of South Bend, Ind., a member of the St. Joseph County, Indiana State, and American Bar Associations.

For 25 years I was professor of constitutional law at the University of Notre Dame, and for 11 years I was dean of the Notre Dame College of Law.

I am appearing here today and submitting this statement on behalf of "For America," a national committee for political action of which I am vice chairman.

**TELEGRAM FROM THE LADIES AUXILIARY OF THE VETERANS OF FOREIGN
WARS**

I received a telegram this morning from Mrs. Dale Wimbrow, the legislative director of the Ladies Auxiliary of the Veterans of Foreign Wars. She has asked me to present to the committee and read into the record this telegram.

May I have your permission to do so? It is very short.

As the duly authorized national legislative director and representative of 350,000 members of the VFW Ladies Auxiliary, I hope that you will offer this telegram to the Foreign Relations Committee of the U.S. Senate to evidence our firm opposition to the impairment of our national U.S. sovereignty that would result from the adoption of Senator Humphrey of Minnesota's Resolution 94.

It is signed by Mrs. Dale Wimbrow, national legislative director, Ladies Auxiliary of VFW, from Vero Beach, Fla., dated yesterday.

OPPOSITION TO SENATE RESOLUTION 94

In my judgment and in the judgment of the people I represent here, it would be a grave mistake for the U.S. Senate to approve of the pending Senate Resolution 94, and thus repeal and delete the so-called Connally reservation that was added to our acceptance of the compulsory jurisdiction of the International Court of Justice.

We believe, in other words, that it is critically important now for the United States to continue to determine for itself what matters are essentially within the domestic jurisdiction of this country. We do not believe that the International Court should be permitted to decide that question by itself.

APPROVAL OF TESTIMONY OF OTHERS

I have read much of the testimony that has been presented to this committee in opposition to Senate Resolution 94 and I subscribe to practically everything that has been said against the resolution by these witnesses.

This is particularly true of the testimony given here by Robert H. Kelley of Houston, Tex.; by George Montgomery, Jr., of New York City; and the statements submitted respectively by Frank E. Holman and Alfred J. Schweppe of Seattle, Wash., and the statement submitted by Emilio S. Iglesias, representing the American Legion.

MISREPRESENTATIONS

Deliberately, therefore, I shall attempt to refrain from repeating the factual statements and able arguments of these distinguished lawyers. I do this to conserve the time of this honorable committee and to direct the mainstream of my own brief testimony to the clarification of certain misrepresentations that are expressed in or easily implied from statements made here and elsewhere by those who favor the adoption of Senate Resolution 94.

Senator GREEN. When you say "here," do you mean in this room?

Mr. MANION. I mean before this committee, and I would confine it to that, if you wish me to do so.

The statements have been repeated in the press, and I am sure that all of the misconstructions are reflected in the testimony.

These misrepresentations, if you please, are not deliberate, and I am not attributing to any witness or any person to whom I refer either directly or indirectly any attempt to deceive the committee.

I merely say that these misrepresentations are implicit in the testimony, as I shall attempt to show.

ACTIONS TAKEN ON GENOCIDE CONVENTION BY AMERICAN BAR ASSOCIATION

First of all, the attitude of the American Bar Association has effectively, although not deliberately perhaps, been misrepresented by some of those who favor the repeal of the Connally reservation.

The American Bar Association has taken no official action on pending Senate Resolution No. 94 which was introduced by Senator Humphrey in 1959.

I submit that, in view of the record, it is misrepresentation to cite the action taken on this same subject by the house of delegates of the American Bar Association in 1947 as equivalent to the attitude of the American Bar Association today.

Since 1947 the house of delegates of the American Bar Association has gone on record at least five times with expressions and resolutions at variance with its world court resolution of 1947.

By resolution in January 1949, the house of delegates of the American Bar Association urged the U.S. Senate not to ratify the pending Genocide Convention until a full study of the impact of that convention upon the domestic jurisdiction of American courts and upon the constitutional rights of American citizens could be made.

In September 1949 the house of delegates officially resolved that the Genocide Convention should not be ratified by the United States.

The debate on this resolution showed clearly that the September 1949 resolution was a clear remonstrance against the possible invasion of American rights and of the domestic jurisdiction of the United States by international bodies that were then being spawned by the new United Nations organization.

ABA'S VIEWS ON CONSTITUTIONAL AMENDMENT RE TREATY-MAKING POWER

In February 1952 the house of delegates of the American Bar Association proposed that the Constitution of the United States be amended in order to protect private rights, States rights, and the internal affairs of the country from possible interference and invasion by the provisions of treaties between this country and foreign nations.

In September of 1952, the same house of delegates extended its resolution of February 1952 by urging that the proposed constitutional amendment include protection against executive agreements as well as treaties.

This succession of actions by the house of delegates of the American Bar Association shows a rapid and complete change of its official attitude from one of faith and confidence in the new international organizations in 1947 to a position of official apprehension and emphatic distrust in 1952.

The internationalists were greatly disturbed by this series of official actions and they made a determined drive within the bar association to have the organization reverse itself in its 1953 national convention at Boston.

To assist the internationalists in this effort, Secretary of State Dulles addressed the 1953 Boston convention and stressed his opinion that the constitutional amendment then known as the Bricker amendment, which the association had urged as protection against treaties and executive agreements, would have a calamitous effect on the conduct of our foreign relations.

While Mr. Dulles' speech was still reverberating, a resolution was introduced to put the convention on record upholding the contention of the Secretary of State and condemning the Bricker amendment. That resolution was defeated by a majority of nearly four to one.

ABA'S "REPEAL BY IMPLICATION" OF VOTE OF CONFIDENCE IN INTERNATIONAL ORGANIZATIONS

This recital of events from the official records of the American Bar Association is made here now to show that if there is such a thing as the principle of "repeal by implication" in statutory construction (and every lawyer knows that there is such a principle), then the vote of confidence in international organizations generally and in the International Court of Justice particularly, which was passed by the American Bar Association in 1947, has been officially, emphatically, and repetitiously repealed in the intervening years.

It is true that prominent members of the American Bar Association are now and have always been opposed to the Connally reservation. Nevertheless, for the past 12 years, the internationalist counsel of these lawyers has been consistently and officially rejected by the American Bar Association as a whole, and it is gross misrepresentation now

to attribute the eccentric views of these individuals to the organized bar of the United States.

As Mr. Holman has already pointed out to the committee, the proponents of world government are militantly on the march again both within and without the American Bar Association, but it would be a mistake for the Senate of the United States to conclude that these internationalists have already convinced the American people that they should gamble with the sovereignty of the United States. Whenever they have a chance to vote on the subject, both the lawyers and the people of this country have and I dare say will always vote overwhelmingly to preserve our American independence from foreign intervention.

I might inject here, in view of the professor's testimony who preceded me, that the same organizations are now on record in favor of Senator Humphrey's resolution, the same organizations of the bar that is, who went on record back in 1950, 1951, and 1952 against the Bricker amendment; for instance, the Bar of the Association of the city of New York, which has recently passed a resolution in favor of Senator Humphrey's resolution. However, it is to be noted that the New York State Bar Association a few days ago tabled a motion which was introduced to approve of Senator Humphrey's resolution, and you have in the record here instances of other bar associations recently which have acted in opposition to the passage of that resolution.

VICE PRESIDENT NIXON'S VIEWS

Now so much for the misrepresentation of the attitude of the American Bar Association on this matter. I come now to something which is somewhat more personal but nevertheless in my opinion important.

The debate over Senate Resolution No. 94 has likewise developed confusion and could, in fact, amount to misrepresentation of the views of Vice President Nixon on the subject of the Connally reservation.

The Vice President's attitude was repeated in the course of testimony here this morning.

It is true that in the city of New York last April 13, the Vice President voiced with approval a prediction that the Eisenhower administration would soon make recommendations for a closer relationship between the United States and the International Court of Justice.

That prediction came to life when President Eisenhower recommended adoption of Senate Resolution No. 94 in his state of the Union message to Congress in January of this year.

However, in the meantime, Vice President Nixon had made another speech this time in Chicago (October 5, 1959) in which he said this:

There are some who suggest that the only answer (to use of force or threats of force as a means of settling differences between nations) is that nations should agree to submit all their differences to some new, all-powerful world tribunal. However well intentioned such proposals may be, they are completely unrealistic in the present world context. As the distinguished Washington correspondent, Arthur Krock, said to me recently, great powers will submit details to arbitration, but never their basic interests.

Then after an interval, the Vice President continued:

The United States should affirmatively explore ways in which its controversies with other nations can be submitted to and decided by the International Court of Justice at the Hague.

Is this a recommendation for the repeal of the Connally reservation? Or does the Vice President's agreement with Mr. Krock's statement, namely, that great powers will never submit their basic interests to arbitration, mean that we should reserve the right to judge for ourselves not merely domestic questions but all matters, domestic and international, which involve our basic interests, such as, for instance, our basic interest in the Panama Canal, which was mentioned a moment ago, the Monroe Doctrine, our expensive military bases in all parts of the world, and so forth?

The general misunderstanding of the Vice President's position on the question of our relationship to the World Court was evidenced by another distinguished Washington correspondent last Sunday, February 14 (Chicago Sun Times, Feb. 14), when Walter Lippmann wrote:

The Senate Foreign Relations Committee has been holding hearings on a resolution which, curiously and remarkable enough, was introduced by Senator Hubert Humphrey and has the ardent support of Vice President Nixon. This, as Mr. K. might say, is an instance where a shrimp has whistled.

Is this misrepresentation of the Vice President's attitude on the Connally reservation?

In view of his present and prospective responsibilities in the premises, the confusion about Mr. Nixon's position on this proposal should be clarified by an unequivocal statement for the information of the country and for the records of the committee.

CONNALLY RESERVATION NOT A SELF-JUDGING PROVISION

With reference to the other misconception, repetitiously uttered here this morning in the testimony that I was privileged to hear, an even more important misrepresentation of the Connally reservation is the frequently repeated charge that it is a "self-judging" provision.

In this connection, we are solemnly charged to remember Sir Edward Coke's maxim that "no man should be judge in his own cause," and told that in the Connally reservation the United States is reserving the right to judge its own case. This is a grave misrepresentation of fact.

The resolution of our adherence to the compulsory jurisdiction of the International Court repeats the jurisdictional competence of the Court word for word, as set forth in paragraph 2, article 36, of the Statute of the International Court of Justice with this proviso added:

That such declaration shall not apply to—

(a) disputes, the solution of which the parties shall entrust to other tribunals. * * *

(b) disputes with regard to matters which are essentially within the domestic jurisdiction of the United States.

That is the language of the resolution before the addition of the Connally reservation. Thus it is the uncontested part of our resolution of adherence that withholds from the jurisdiction of the International Court all disputes involving domestic questions.

Please observe, too, that the uncontested part of our resolution of adherence significantly excludes the following language from article 36 of the Court Statute:

(6) In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

I wish to emphasize, please, that this was deliberately stricken from our reservation of adherence prior to the addition of the Connally reservation which is the subject of Senator Humphrey's proposal. This exclusion was deliberately made in and by the Foreign Relations Committee of the Senate before Senator Connally proposed his reservation which is now the subject of the Humphrey resolution. I submit therefore that if there is any substance to the charge of "self judgment," the offense was not committed by the Connally reservation.

It was committed by the Senate then when that body deliberately knocked out the section of the World Court Statute above quoted, which spells out the right of the International Court to decide for itself all jurisdictional disputes of every kind and character.

Thus the Connally reservation was merely a positive restatement of what was already declared, namely that as far as the U.S. Senate is concerned, the International Court should not have the right to settle any dispute about the Court's jurisdiction in any case. The Connally reservation merely underscored that Senate declaration with specific reference to matters essentially within the domestic jurisdiction of this country. If the advocates of the Humphrey resolution are sincere in their professed effort to purge the resolution of what they call its "self judging" characteristics, then they must do more than repeal the Connally reservation. They must go further and move to reinstate the significantly deleted paragraph 6 of article 36 of the Court Statute itself.

MEANING OF "JUDGING OWN CASE"

One does not "judge his own case" when he denies the jurisdiction of a particular court to try that case.

In fact and truth, however, the United States is not attempting to "judge itself" or "decide its own cause" when it withholds from this International Court the right to be the final arbiter of its own jurisdiction.

There is no court in our entire judicial system that has such a sweeping prerogative. By the Constitution of the United States, the original jurisdiction of our own Supreme Court is restricted to two types of cases and any or all of its appellate jurisdiction may be withdrawn from it at any time by the Congress.

An omniscient court with self-determined jurisdiction over all things and everybody under all circumstances would be the very definition of tyranny. In our concept of law and justice there is no branch of government, executive, legislative or judicial, that has the right to define the limits of its own jurisdiction. There is certainly no reason why we should confer upon an alien body powers that we deny to our own legal institutions.

A litigant does not "judge his own case" when he challenges the jurisdictional right of a particular court to sit in judgment on a

particular lawsuit. Such a plea to the jurisdiction is always in order in all stages and areas of our jurisprudence. Coke's maxim is violated only when one is a plaintiff or a defendant and judge in the same lawsuit.

I underscore that if you please, Mr. Chairman, and gentlemen of the committee, because I heard the term "self-judgment" used here this morning at least 25 times, and the repetitious use of that word is entirely misrepresentative, and should be clarified.

The Statute of the International Court itself plainly states that submission to its jurisdiction may be made conditionally, unconditionally or not at all (art. 36, par. 3).

Bad words for good causes and vice versa.

The misrepresentation of the Connally reservation as a self-judging declaration is an effective application of the tactical formula which condemns a good cause with a bad word. This formula also works in reverse. That happens when a bad cause is beautified with the attribution of a pious phrase.

NO WORLD LAW

At present, as Senator Hickenlooper has shown conclusively, I think, in the interchanges here this morning, there is no such thing as world law.

This brings me to the final and most fundamental of all the misrepresentations advanced by the proponents of Senate Resolution 94.

Secretary Herter told this committee in substance that the Connally reservation is obstructing the attainment of a "working rule of law in the world," which would displace the "rule of force." In his commendatory letter to Senator Humphrey last November 19, President Eisenhower likewise linked the repeal of the Connally reservation with the President's expressed hope for "world peace through world law." Systematically for the past 2 years the melodic phrase "world peace through world law" has been made to resound throughout the country as the bright alternative to our selfish addiction to the Connally reservation. There has been righteous and repetitious assurance that a peaceful and legally ordered world will surely follow upon our trustful and unqualified submission to the International Court of Justice. The cold light of stark reality shows that all such promising prediction is sheer fantasy.

In the presently deranged state of mankind there is little prospect for world peace and there is no such thing as world law. Under present conditions, therefore, an unconditional submission of our disputes with other governments to the International Court of Justice would only serve to betray our own vital national interests and give immeasurable aid and comfort to our vicious, ruthless and implacable Communist enemies.

MORAL LAW

In his testimony before this committee, Secretary Herter quoted the late Secretary Dulles as follows:

We in the United States have from the very beginning of our history insisted that there is a rule of law which is above the rule of man. Thus since its inception our Nation has been dedicated to the principle that man, in his relationship with other men should be governed by moral or natural law.

That is self-evident truth. The moral, natural law proclaimed in our Declaration of Independence has been codified in and projected through our American constitutional system.

Here in America, therefore, as Mr. Dulles implied, government is man's agent for the protection of God's gifts. Its unique federated powers are limited to the service of human rights and its processes and decrees are enforced with moral as well as legal sanctions. This is what Americans understand as "law."

On the international plane such law loses its legal enforcing arm. An international court cannot send a sheriff to levy an execution against the property of a sovereign state. Neither could it order the arrest of a criminal nation without starting a war which it is the very purpose of an international court to avoid.

On the international plane, since legal sanctions are impossible, moral sanctions are imperative. Such moral sanctions are the only hope for what we call international law because on the international level, law must depend solely upon international morality for its preservation and enforcement.

In how much of the world today is morality and the natural, moral law recognized as the motivation of governmental action? One-third of the earth's surface and much more of the world's population is now ruthlessly tyrannized by a self-appointed materialistic hierarchy of professional atheists who deny the existence of morality and worship the iron rule of force, deceit and conspiracy.

This cult of cruel conscienceless coercion continuously threatens violence against all mankind. It is from this entrenched conspiracy that shooting war may be expected to proceed at any moment that is propitious for its purpose and it is because of this materialistic plunderbund that the whole world trembles fearfully on the brink of nuclear destruction. This is the frightening war potential from which the "world peace through world law" advocates now derive their popular emotional appeal.

GIVING THE INTERNATIONAL COURT JURISDICTION OVER ALL AMERICAN AFFAIRS

We are asked to give the International Court unreserved jurisdiction over all of our American affairs because of the good influential example that this surrender will provide for the case of world peace. Although the Communist plunderbund has refused to submit itself to any part of the jurisdiction of the International Court, where they are now ready and eager to sit in judgment upon the right of the United States to retain its naval base at Guantanamo, Cuba, to keep the American flag flying in the Panama Canal Zone and to protect its expensive ring of military bases in half a hundred countries of the world. Prima facie at least, these are international questions subject now, then, without the repeal of the Connally reservation to the judgment of the International Court where we have one judge and the Communists have two judges. The Humphrey resolution would add to these present exposures also such subjects as immigration, tariffs, and the immunity of Soviet spies now inside of our country.

SENATE RESOLUTION 94 CALLS FOR SURRENDER OF U.S. SOVEREIGNTY

The issue is self-preservation. Senate Resolution 94 is more than a proposal for the elimination of a reservation in a treaty. Senate Resolution 94 calls, in effect, for the surrender of our sovereignty. There is no law to govern the decisions of the International Court of Justice with respect to the scope of its own jurisdiction or anything else.

When and if Senate Resolution 94 is passed, any country on earth can hail us before the bar of this tribunal for any reason whatsoever and we will be powerless to resist the Court's assumption of jurisdiction in such a case. In the presently precarious state of our national security, now is certainly not the time to expand the right of our deadly enemies to penetrate our vital defenses under color of law.

Let us face it: Neither peace nor law is possible for a world that is locked in a death struggle between freedom and communism. We can think about "world peace through world law" only after the diabolical menace of the Communist conspiracy has been swept from the face of the earth. In the meantime, we will have all that we can do to preserve this country and its freedom-protecting constitutional system from complete destruction. This is no time to let down our guard. Senate Resolution 94 should be defeated.

COMMITTEE PROCEDURE

Senator GREEN. Do any of my colleagues have any questions?

I have to leave because I have another engagement.

Will you take my place, Senator Hickenlooper?

Senator HICKENLOOPER. I have a few questions.

Senator GREEN. Will you take my place?

Senator HICKENLOOPER. It will be difficult; Senator, to take your place, but I will attempt to fill in for you.

Senator GREEN. I wish to make the announcement that the committee will have to adjourn either now or in a few minutes, and we will reconvene here at 3 p.m. this afternoon.

Senator HICKENLOOPER. If Dean Manion is willing to stay, I am willing to stay for 10 or 15 minutes here until 1 o'clock in order to finish with him, unless there's something the chairman wanted to ask him on the matter.

I would just as soon stay and interrogate him at the present time.

Senator GREEN. I wish you would, if you prefer to stay a little longer. We will come back at 3 in any event.

Senator HICKENLOOPER. I would prefer to interrogate him right now.

DEFINING THE INTERNATIONAL COURT'S JURISDICTION

Thank you, Dean Manion, for a very forceful and clear outline of your views of the general attitude which you express and represent on this subject.

I have a few questions that bother me about this resolution. In the first place, we have built in this country a system of law, based now perhaps in the main on statute, but in any event based upon, let's say, Anglo-Saxon jurisprudence, which went back into the dark days of history, and which is based upon human and moral experience.

We think we understand that system fairly well here, and I believe it is safe to say that we are satisfied that it is the best system of rules of human conduct, which we call law, that is in existence in the world today. That might be disputed by some other countries, but I think we believe that universally.

Now we understand court systems here and we understand what our courts are. In the main they are interpretive bodies. They interpret either the statutes that have been passed by our legislatures in the various States or in the Congress, or in the absence of such specific statutes, for answers they can go back into the body of common law which is fairly well established. But in connection with this World Court, I fail to see where there is any clear defined set of rules which sets out clearly what the jurisdiction and what the limitations and the specific powers of this Court may be.

Is there any such body of law that you know of that could regulate or clearly define the area in which this Court would operate?

Mr. MANION. None. I find no such body of law. There isn't any such body of law. In your interrogations this morning treaties were advanced as a substitute for this body of law, and it was suggested that in construing the treaties, the Court would be guided by law.

But it was later pointed out in the interchanges with Senator Church, that a treaty is a contract, and if we have a dispute with the other contracting party, there is a question as to whether the contract should be construed this way or that way.

Now that is an ordinary contractual lawsuit which we would have on the domestic level, but in construing that contract on the domestic level, the Court has a body of contract law which it applies to the construction of the contract and on the international level there is no body of contract law which would guide the Court.

You simply have a plenipotentiary board of arbitration, and a board of arbitration is not, as we all know, a law body at all. It is a body which reflects the political personal opinions of the members.

Senator HICKENLOOPER. So far as a contract is concerned under our concept of law, we have limitations on contracts. You and I can't make just any kind of a contract that we want to.

Mr. MANION. Indeed not.

Senator HICKENLOOPER. We have to make contracts that are within the specific limitations of statute or of certain common law provisions that have grown up over the years and are eventually reflected in the ordinances or statutes.

Mr. MANION. Yes. A contract cannot be made against public policy for instance.

Senator HICKENLOOPER. And we can't make a contract for an illegal purpose. We can make it in writing but the contract is not now enforceable. Now where in the international field is there any rule of prohibition or permission that guides the making of a treaty? As I attempted to suggest a while ago, isn't a treaty a matter of political expediency of the moment without any rules or guides except as the parties happen to agree to on a certain subject?

Mr. MANION. Yes, that is quite true. I think it was Lenin who said that in the communistic technique a treaty is like a piecrust. It is made to be broken. And I think that Senator Dodd, when he was a

Member of the House of Representatives, accumulated and put into the record a catalogue of more than half a hundred so-called treaties that the Communists had drawn up with this country, all of which they had broken when, as, and if the time arrived to break them.

Senator HICKENLOOPER. That's right. And I think the Kaiser said a treaty was a scrap of paper.

Therefore, we find great divergence, and I think we could show many examples over the world in which there is no basis, no foundation, upon which a treaty is built except the foundation of expediency or political desirability at the particular moment, and that treaty will exist so long as it is mutually desirable to the parties who have entered into it.

MAKING THE INTERNATIONAL COURT SELF-JUDGING

We have used the term "self-judging" so far as the Connally resolution is concerned. We say it is self-judging. Is there anything that can even compare with the opportunity for self-judgment that the repeal of the Connally amendment would lodge in the International Court? Wouldn't they become utterly and completely self-judging?

Mr. MANION. Entirely without any limitations whatsoever. We would have no appeal except as was pointed out here this morning. Let us take the matter of immigration.

If somebody or some country on behalf of somebody goes and brings out an action in the International Court of Justice alleging that their nationals are being wrongfully excluded from the United States by the quota system, and they thought that it was an affront to them as a nation to be subject matter of a discriminatory quota, now the court decides that that is not a domestic question, that is an international question which it will properly consider.

We can scream our heads off that it is domestic but we have foregone the right to so decide, and then we can only go to the enforcing body which is the Security Council of the United Nations with the veto, which we have always refrained from using.

Senator HICKENLOOPER. We can, I presume, argue various examples in the past. But even in our own country just one example which goes undisputed on the part of some people occurs to me. Years ago when I was young it seems to me we used to get a piece of green paper which said one could go to the Treasury and get so many ounces of gold for that piece of paper. That was a contract, everybody thought, between the Government and the fellow who held the gold certificate. But under certain conditions gold was declared to be a bad commodity to possess, and I think the Supreme Court itself reasoned around to the point where they said that a contract is not a contract.

Now even under the orderly system of our law, which we think we understand, many things of that kind can occur. So it seems to me that we are straining our credulity a great deal when we would entrust, without restraints, decisions to an international court of 15 people, most of whom have not been subjected to a background of training in what we believe to be legal morality, according to our standards, or who have been trained in a different standard which they have believed to be legal morality but which lies squarely in conflict with ours. Now I fail to see where there is any restraint on this court.

Mr. MANION. No; there isn't any, and if I might venture this observation, which springs out of the discussion this morning on all sides: The attempt to start world government through an international court is putting the cart before the horse.

If you look at the Constitution of the United States, the first body of government that is created is legislature, and the second body is the executive, and the last body in logical and legal order is the court.

The court has business to do because of legislation and because of executive action and because of the Constitution which it is called upon to construe.

Now here what we are really doing is starting the processes of world government beginning with the Court, without status to construe, without executive orders to enforce, and without a constitution of government all of which should provide the backdrop for any judicial body. All that is missing.

Senator HICKENLOOPER. We are putting up the roof without any supporting structure under it?

Mr. MANION. That is precisely true.

COMMUNIST ATTITUDE TOWARD THE INTERNATIONAL COURT

Senator HICKENLOOPER. I brought up a moment ago the question about the two powerful entities in the world, the entity represented by the United States and its allies, which we call the free world on the one hand, and the Russian complex on the other, the Russian bloc and its influence. As you pointed out in your statement, the Russians have completely ignored the question of the World Court because they have nothing to do with it.

Nevertheless they have two judges. They have two Communist-controlled judges on the Court. How effective could a court of this kind be in helping with the establishment of world peace when one of the two powerful factions in the world, that is, the Russian complex, is not a party to it and will have nothing to do with it?

What contribution toward world peace can that make?

Mr. MANION. You see the world peace is disturbed now, as you implied, precisely because of the Communist menace. Yet this medium is not available to settle that controversy. We have been told here that a person should not be a judge in his own case. But the Communists are proceeding to be judge in somebody else's case. They have got two judges on the Court and they expect to have no causes of action in front of the Court and will not submit to its jurisdiction. This movement does not reach the real threat to world peace, which is the Communist conspiratorial threat, and anything short of that won't contribute to world peace in my judgment.

Senator HICKENLOOPER. In other words, you feel that before any such court or institution of that kind could finally have any chance for success, first, there would have to be substantial universal agreement so far as the power in the world is concerned that the Court is essential and that its jurisdiction should be submitted to, and secondly, that these agreements and the structure of world association should be sufficiently constructed so that the Court could act only as an interpreter of those agreements if they are realistic and if they are conceded by all the parties.

Maybe I have confused that statement a little bit.

Mr. MANION. No, you are right, and as Secretary Dulles pointed out many times in his speeches and writings, the only sanction for international law is morality, the natural moral law, and it lay in the hope that nations would subscribe to that.

As long as there was a possibility that this common denominator of morality would prevail in the world, then there was hope that a court or other international body acting upon that moral conviction would function.

But here we have now an organization in the world which is as powerful—some people say even more powerful—than we are physically, which proceeds upon the basis of amorality which is diametrically at war with the very thing Secretary Dulles said is a condition precedent to international justice.

It is unrealistic to talk about a court functioning under circumstances where we have this powerful body, this conspiratorial apparatus which is at war with the very concept of justice and morality.

CURBING JUDICIAL OR OTHER EXCESSES

Senator HICKENLOOPER. It seems to me that in the history of the world legislative bodies that have acquired authority have in the main sprung up, been created, and have seized their authority as a result of either judicial excesses or the excesses of sovereigns who may go through the form of having somebody to administer the King's justice and also call him a judge. And those excesses which are arbitrary and whimsical and uncontrolled have been the very things in the past that have caused people to rise up and say, "We will set up our own legislative bodies to write the rules and then we will, as a matter of convenience, establish courts to interpret them."

Mr. MANION. Yes, that was the basis of it—

Senator HICKENLOOPER. I think that is something along the line of what you said. We were talking about not having any structure before we put the roof up.

Mr. MANION. That is precisely true.

That was the history of the British Revolution and it was the genesis of the 1689 bill of rights.

Senator HICKENLOOPER. I think it has been characteristic of a great many countries.

Mr. MANION. Yes, indeed.

Senator HICKENLOOPER. Where excess, whether strictly judicial or whether the courts were only acting as the tools of the sovereign who might claim absolutism, got to the point where the people could not stand such whimsy or such caprice on the part of the sovereign or his so-called courts, then they had to take the power away from them. They had to circumscribe them. They had to set up their own legislative bodies in the protection of what they believed to be the moral law, basically in those cases the moral law itself.

I don't know that I have anything else to say at the moment.

Do you have any questions, Senator Williams?

Senator WILLIAMS. No questions.

Senator HICKENLOOPER. I want to thank you very much. I'm sorry to hold you here, but I thought it would be better to question you now

so you would not have to come back to go on with your testimony at 3 o'clock this afternoon.

Mr. MANION. Thank you, Senator. I appreciate that. I preferred to stay.

Senator HICKENLOOPER. We will adjourn until 3 o'clock this afternoon according to the statement of the chairman, at which time the testimony will continue.

(Whereupon, at 1:15 p.m., the hearing was recessed, to reconvene at 3 p.m. of the same day.)

AFTERNOON SESSION

(Present: Senators Green (presiding) and Carlson.)

Senator GREEN. This meeting will reconvene. We have a good many witnesses, so I want to impress upon those who testify that the rule that we established at the beginning of this morning of not more than 10 minutes each will apply, that is, for the presentation. If there are questions, of course, the testimony will be prolonged. This morning we ran well over that figure and there are a number of witnesses to be heard from and I think it only fair that we should inform the witnesses that they are limited to 10 minutes.

Senator CARLSON. Mr. Chairman, you wouldn't object if the members used more than 10 minutes for questioning?

Senator GREEN. No; I am not suggesting anything of the kind. You may ask as many questions as you wish.

The next witness scheduled was Mr. David Ginsberg, board member, Americans for Democratic Action. I understand that Mr. Ginsberg, who was here this morning, did not find it possible to return this afternoon. His statement will, therefore, be inserted in the record at this point.

(The statement is as follows:)

STATEMENT OF DAVID GINSBERG, BOARD MEMBER, AMERICANS FOR DEMOCRATIC ACTION

Mr. Chairman and members of the committee, my name is David Ginsberg and I am an attorney engaged in the practice of law in Washington, D.C. I am privileged to appear in support of Senate Resolution 94 both as an individual and as a board member of Americans for Democratic Action.

When the United States filed its declaration of adherence to the Statute of the International Court of Justice in 1946, it did so with a reservation that our declaration did not apply to "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America." Senate Resolution 94, introduced by Senator Humphrey, would delete the words "as determined by the United States of America", but leave the domestic jurisdiction exclusion otherwise untouched. The underlying justification for Senate Resolution 94 is that no litigant—citizen or nation—should be the judge in his own case.

It would be hard to find individual or organizational witnesses who would lend added dignity or strength to the list of persons and groups already committed to the resolution. Senate Resolution 94 has been strongly endorsed by President Eisenhower, Vice President Nixon, Secretary Herter, Attorney General Rogers, "and the administration as a whole." The organized bar of the United States, speaking through the American Bar Association, and the American Society of International Law, have long favored the repeal of what is called the "self-judging reserve clause." And with materials contained in a recent article in the American Journal of International Law by its editor in chief, Professor Briggs of Cornell University ("United States and the International Court of Justice: A Reexamination," April 1959) and a section report of the

American Bar Association ("Self-Judging Aspect of the United States' Domestic Jurisdiction Reservation With Respect to the International Court of Justice," August 1959) such scholarly background data as the committee may need to analyze the problem is already in the committee files.

The issue before the committee is not whether the United States should permit questions of domestic jurisdiction to be decided by the International Court; the Statute of the Court and the U.N. Charter both forbid this, and the proposed change in the formula of our adherence cannot alter that constitutional framework. The issue is whether we are prepared to permit the Court itself to determine whether particular disputes submitted to it are international in scope. The Statute of the Court already provides: "In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court." Under our 1946 declaration of adherence, however, we insisted on reserving for self-determination questions which the Statute declares should be decided by the Court.

Repeal of the self-judging reservation would not then give the Court power to intervene in domestic matters. It would simply affirm the Court's existing authority to determine whether a matter is within its jurisdiction.

The practice of the Court over the years has been both judicial and judicious. The history of the Court and its predecessor, the Permanent Court of International Justice, makes clear the sensitive regard of the Court for all matters of jurisdiction. It has never sought to aggrandize power. There exists no case in which the Court has taken jurisdiction over a domestic issue. Fears aroused by frequent references to questions of immigration, trade and tariff barriers, and the Panama Canal are baseless; in the present state of international law, questions in these areas could reach the Court, if at all, only if the United States assumed explicit new international legal obligations with reference to them.

Our need for the processes of the Court is greater than that of other nations. Yet we who have have most to gain by providing a more certain means for the judicial resolution of international disputes continue to deny the Court its proper place in international affairs. Our commitment to the rule of law, our profound concern with the extension of the rule of law, our democratic heritage, our leadership of the free world, our enormous private and public investments abroad, our military bases abroad, all proclaim that self-interest, if no larger interest, demands that we take steps to make of the International Court a more useful judicial body.

Continued adherence to the self-judging reservation disables the United States from using the Court in procedures to establish its rights against other nations. It is true that only 5 other nations of the 39 which have accepted the Court's jurisdiction have attached similar reservations; it is also true that the United Kingdom, France, and India have withdrawn their earlier reservations. But the rule of reciprocity gives the self-judging reservation a crippling effect because any nation we may seek to bring before the Court can invoke against us our own domestic jurisdiction reservation and thus prevent the Court from deciding the case.

No Communist nation has accepted the compulsory jurisdiction of the Court. Our efforts to settle aerial incidents, violations of human rights under World War II peace treaties, and other disputes, peaceably, through the Court, have thus been thwarted by the Soviet Union and its satellite nations. Only by accepting the Court's jurisdiction—not by insisting on determining it ourselves—can we hope to provide an example for the world community and lead and persuade other nations, perhaps in the long run even some or all of the Communist nations, to join in the resolution by the Court of international legal disputes. The fundamental evil of the self-judging reservation is that it leaves the United States open to the charge that it is giving lipservice only to international judicial processes.

Fears of arbitrary action by foreign judges will not withstand even a preliminary examination. Candidates for the Court are nominated by the national groups on the Permanent Court of Arbitration, and elected by an absolute majority in the General Assembly and the Security Council. Both the nominators and the judges elected (men like Lauternacht, Hackworth, and Alvarez) have been scholarly and responsible jurists. They are not the product of power politics; they have spoken and speak for a consensus of informed world opinion.

This committee knows that the bench of the Court includes a judge from the United States. In the unlikely event that the United States is one day not

represented by a permanent member on the Court, the Statute of the Court expressly provides that ad hoc judges may be chosen by one party whenever the national of another is on the Court, or by both parties if neither has a national on the Court (art. 31). They are appointed by the parties, and are directed to take part in the decision on terms of complete equality with their colleagues. A secret conspiracy against a litigant is not only absurd to contemplate but a practical impossibility.

Finally, Senate Resolution 94 expressly provides that the declaration may be terminated on 6 months notice. It is thus frivolous to suggest that the United States can by adherence to the Court under Senate Resolution 94 be subjected to policies and laws on matters of domestic concern contrary to our own laws and practices.

The merits of the question are indeed so clear that this committee itself rejected the self-judging reservation 14 years ago and reported the declaration of adherence for favorable Senate action without any self-judging reservation.

The arguments against Senate Resolution 94 would undermine the foundations of the International Court itself. The appeal is to unfounded and irrational fears; the source is a renascent isolation. In the vanguard of attack are forces which have plagued every President from Wilson through Eisenhower in their efforts to secure adherence to the Court and the extension of the rule of international law. They cry out against what they call the threat of foreign usurpation of our law but they exhibit no more respect for our own Supreme Court and for the rule of law within our own Nation.

The availability of a forum for the judicial settlement of legal disputes between nations is not a panacea for our international problems. The International Court may be able to solve certain international legal disputes which are in their nature justiciable; that Court cannot make international policy or resolve political or economic disputes. After Senate Resolution 94 is adopted, as I hope it will be adopted, the problem of Berlin and the problem of Germany will still be with us; the issues of disarmament and inspection will still persist; the difficulty of assisting underdeveloped countries in their entry into the 20th century will still confront us, and the contest with the Soviet Union for primacy in men's minds will continue unabated. Moreover, most disputes between states will continue to be dealt with by negotiation, conciliation, arbitration, good offices, and similar means. What then will have been accomplished? Only this: we shall have given our own people and the world community one more instrument, the proud and ancient instrument of an independent judiciary, for the solution of certain types of international legal disputes. And this, in the present stage of world affairs, will be a major accomplishment.

Senator GREEN. The first witness will be Mr. R. Roy Pursell, president of the Congress of Freedom, Omaha, Nebr.

Mr. Pursell, I am glad to see you.

STATEMENT OF R. ROY PURSELL, PRESIDENT, CONGRESS OF FREEDOM

Mr. PURSELL. Mr. Chairman and honorable Senators, may I say my name is R. Roy Pursell of Plymouth, Mich., representing the Congress of Freedom. It is a great pleasure to appear before you to urge that you not repeal the Connally amendment for the following reasons:

Such repeal would submit the United States of America to the jurisdiction of the Permanent Court of International Justice (called the World Court) of matters in controversy between the United States and other nations.

Let us see what might happen on three items that likely would be before the World Court if we would experiment and remove this protection of our national territory:

ISSUES OVER WHICH THE COURT MIGHT TAKE JURISDICTION

For many years the U.S.S.R. has been scheming to find some way to internationalize the Panama Canal. What chance would we have to retain this vital link in our national security if we give 14 alien judges the power to give the canal to Panama? Actually eight judges could do it by a majority vote.

Castro could ask the World Court to make us vacate the big Navy base in Cuba. What a horrible thing it would be if Russia would then make a submarine base there so close to our shores.

Alaska is but 55 miles from the Soviet Union, but a great distance from United States proper. The Soviets teach their people that the sale of Alaska by the czars is not binding on it today. Russia could ask that our 49th State be returned to the Soviets, thereby permitting them to establish a base threatening Canada and the United States. These are but three of many examples full of danger which could be cited.

We already have a sad record of being outvoted by folks who do not appreciate our sense of property rights. In the Human Rights Convention on the vote to recognize the individual's right to own real estate, only Turkey voted with us and 14 voted against us (even Canada voted against such recognition). Our respect for property rights is unique among nations of the world.

Gentlemen, how then could we expect the 14 other judges in the World Court to protect our national property?

UPHOLDING THE CONSTITUTION

Let us uphold the Constitution.

The Constitution of the United States now provides that the judicial power be vested in one Supreme Court and numerous inferior courts. It is very hard to see how Congress can assume the power to change these provisions by misinterpreting the treaty clause. We strongly urge you gentlemen who have taken the oath to uphold the Constitution not to attempt to place foreign judges above our own Supreme Court, thereby opening the doors to others grabbing our outposts.

We have already come dangerously close to that because the World Court is the creation of the United Nations and we made its charter the supreme law of the land in 1945.

Later, the Morse resolution was introduced in the Senate to give the World Court blanket authority over the whole of the United States. The Senate then revolted at such a horrible idea, and wisely adopted the Connally amendment to that resolution in order to protect the interests of the United States. Now we have the right thereunder to determine which cases may go to the World Court. That amendment has protected us for 13 years.

Today we are here considering the advisability of wiping out that protection and opening the doors wide to raids against our possessions, and very possibly our sacred freedoms as well.

All yearly conventions of The Congress of Freedom have gone on record for the past 9 years urging the Congress to build in more and more protection into our Federal Government. Extreme pressures are being exerted both from without and from within to destroy our beloved Constitution.

WHAT IS THE LAW?

We are led to hope that if we agree to give up this Connally amendment, that in some mysterious way we shall arrive at the rule of law and that the Soviet Union and the free nations can settle all their differences by bringing them before the World Court.

This argument is either childish or something less than honest. Differences between the United States and the Soviet Union cannot be settled by vague law, because the question arises: "What is the law?" Will we settle questions of property according to Soviet or Hungarian law? Will we settle the rights of individuals according to Soviet principles of justice or the ancient rights of the Anglo-Saxon common law? There is now no authority which can decide these issues. We should simply be taking on a new set of quarrels with the Communist powers, and what rules of law will be enforced?

GROUPS COMPRISING THE CONGRESS OF FREEDOM

The hundreds and hundreds of proconstitutional groups making up the Congress of Freedom and the many groups comprising the Southern Michigan Council of Libertarian Representatives look to you to continue to protect our great heritage of freedom and not let us down. We are counting upon you not to repeal the Connally amendment.

When the day comes that the world is really at peace and no other nation threatens our way of life, then, and only then, can we safely consider giving alien judges any power whatever over our God-given freedoms.

I respectfully request that you make this a part of the recorded hearings on Senate Resolution 94.

Thank you.

Senator GREEN. Thank you very much.

Senator CARLSON, any questions?

Senator CARLSON. Mr. Chairman, for the record I think it would be helpful if Mr. Pursell would mention some of the organizations that compose the Congress of Freedom.

I think as his testimony is read, that question arises, and I think for the record, some of the members ought to be listed.

Mr. PURSELL. Well, they all have ranged as high as 550 and I think at present we are down a little bit like most businesses, down to about 350.

Senator CARLSON. What individual groups? You mentioned here groups, different organization that constitute the congress.

Mr. PURSELL. Yes; they are pro-Constitution groups. There are many of them that are antifluoridation groups, there are a great number of them that are real-estate groups, property owner groups, homeowner groups and constitutional study groups, and they range in, I believe, every State of the Union.

But they are all proconstitutional groups. That is the basis upon which they are admitted to membership in the Congress of Freedom.

Senator CARLSON. That is all.

Senator GREEN. Thank you. The next witness is Charles R. Goldsborough, Jr., attorney, Calvert and Preston Streets, Baltimore, Md.

**STATEMENT OF CHARLES R. GOLDSBOROUGH, JR., ATTORNEY AT
LAW, BALTIMORE, MD.**

Mr. GOLDSBOROUGH. Thank you for the privilege granted by your committee under our Constitution to appear to speak in favor of retaining the Connally reservation. I am Charles R. Goldsborough, Jr., a lawyer from Baltimore, Md., and member of the American Bar Association. I appear simply as a private citizen.

This Resolution No. 94 has such far-reaching potentialities that after discussing this matter with many acquaintances I feel compelled to speak against the proposal to repeal the Connally amendment.

INALIENABLE RIGHTS

The problem before you is not alone one of law, of international good will, or of faith among nations. It goes far deeper than any of these. It is a matter which goes to the heart of the rights and freedom of every American now living, and for generations yet unborn. This core of the question is the inalienable rights protected by our Constitution and the subsequent justice thereby secured to us by our courts.

I think we cannot remind ourselves too often of the unique words of the Declaration of Independence:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are Life, Liberty and the pursuit of Happiness.

These inalienable rights we enjoy. All men are entitled to them. These rights of man are natural to him and transcend all human institutions. They come from God alone. No nation may bestow these rights nor should deny them to its citizens. The rights to "Life, Liberty and pursuit of Happiness" are above governments and given to man at his birth by his Creator.

Every man has the inviolable moral power to defend these rights as his own, and no power on earth may deny them. And God, who gave man these rights, will never take them from man.

These inalienable rights are basic in our Constitution and, properly, civil rights flow from and amplify those inalienable rights.

A just government will protect these basic rights of man. Justice is "that which disposes us to give to each man what is his due." Unless we abide by the fundamental concept of what is man's due, i.e., his inalienable rights, we cannot have justice.

All of our elected and appointed officials from the President of the United States down to the least justice of the peace acknowledge these rights when they take their oath of office on the Holy Bible to uphold the rights of their fellow citizens.

I put the question to you. If a man, a nation, or a government does not believe in God, then whence do man's rights come? The question answers itself. An atheist must of necessity believe that man has no God-given rights but receives his rights from his government. From this necessarily follows the conclusion that such rights, since they come from the government, may be taken away by that government. This reduces rights to an arbitrary, transient status. This conclusion is repugnant to our entire concept of justice.

SUBMITTING BASIC RIGHTS OF AMERICANS TO AN ALIEN JURISPRUDENCE

We cannot then in justice or conscience, and I contend cannot constitutionally, submit the basic rights of American citizens to a jurisprudence which is so far alien to our own that it does not share our basic and true concepts of the rights of man. We cannot submit our rights to the control of a judicial tribunal which does not share our basic and true concept of justice.

The International Court is such a tribunal. I do not call it an International Court of Justice, because the Court is composed of members from Iron Curtain countries which have atheistic governments. The Court has, as well, justices from still other countries whose concepts of justice are contrary to our own. Therefore by the very nature of this composition it is incapable of dispensing true justice as we understand it.

I am thoroughly convinced that nations no less than individuals should be subject to law. As there was no security for individuals until all were made to submit to municipal law, so there will be no international security until all nations comprehend and appreciate the source of man's inalienable rights and the nature of justice.

I do not believe in extending the power of courts to the international area now. The time is not yet propitious for us to hand over the power of deciding what is justice and what is not to a court some of whose members think that justice is anything that promotes worldwide revolution. And other justices with beliefs almost as repugnant to us.

The World Court's blood brother, the U.N.'s Commission on Human Rights, after 400 meetings came to the extraordinary point where the majority absolutely refused to include in the Covenant on Human Rights any provision recognizing or guaranteeing the basic American right to own private property and to be secure in its enjoyment as against its arbitrary seizure by government. What makes anyone think that a World Court, in its turn, will come to any different positions regarding similar rights which we deem to be basic?

QUALIFICATIONS FOR JUDGES OF INTERNATIONAL COURT

The second general ground upon which I oppose Senate Resolution 94 of the Statute of the International Court itself.

Chapter I, article 2, of the Statute states that for persons to qualify as judges they must: "possess the qualifications required in their respective countries for appointment to the highest judicial offices. * * *

Is there anyone so ill-informed as not to know what qualifications the Soviet Government and its satellite governments require in their respective countries for appointment to their higher judicial offices? The qualification, the sine qua non, is an unswerving dedication to the promotion of communism at home and throughout the free world. Such a judge is incapable of an objective and impartial decision. He is, because of his beliefs, obligated to promote not the rights of man, not justice, but atheistic materialism. Any official freely elected in the democratic country who does not keep this fact in mind, when dealing with a matter in which the Soviets and their satellites are

concerned, is fooling himself. Such an official is doing a dangerous disservice to his country.

Once a person qualifies as a judge under chapter I, article 2, of the Statute of the International Court he cannot be impeached or otherwise removed for good cause by any organization other than the Court itself. Chapter I, article 18, provides:

No member of the Court can be dismissed unless in the unanimous opinion of the other members he has ceased to fulfill the required conditions.

The unanimous opinion of the other members: Does any thinking person actually believe that the Soviets and/or their satellites would allow for an instant one of their fellow judges to be dismissed?

Under this article 18, you have then a group judging its own case.

I mention this section of the Statute in answer to those proponents of Senate Resolution 94 who contend that no country should judge its own case in determining what constitutes a domestic or what constitutes an international matter. Idealists so-called insist that such decisions should be left up to the World Court.

Is not the International Court judging its own case under the provisions of article 18?

In "lighting the way for other countries" let us not be blinded by our own torch to some of the basic tenets of the Statute of the International Court.

SOVIET ACTIONS

In allowing the Court to determine whether a matter is essentially domestic or an international question, as proposed in Senate Resolution 94, the United States would rely upon chapter I, article 20.

This article provides:

Every member of the Court shall, before taking up his duties, make a solemn declaration in open Court that he will exercise his powers impartially and conscientiously.

There are now and no doubt always will be Soviet and their satellite representatives on the Court. Presently Soviet Russia and Communist Poland are represented on the Court. The Soviets have made many solemn declarations on every subject from fair trade to military agreements.

These same Soviets have broken their solemn declarations no less than 48 times in dealing with 50 major agreements.

On this point 35 years ago our then Secretary of State Bainbridge Colby said:

We cannot recognize, hold official relations with, or give friendly reception to the agents of a government which is determined and bound to conspire against our institutions.

More recently on this point, the U.S. Senate Committee on the Judiciary (84th Cong., 1st sess., in "Soviet Political Treaties and Violations") said about Soviet Russia:

That this Government had broken its word to virtually every country which it ever gave a signed promise.

What accounts for this type of action? In the *Foundation of Leninism* (Stalin Marxist Library Editions, p. 101), we learn:

Soviets—

*** Will accept a reform in order to use it as an aid in combining legal work with illegal work, to intensify under its cover, the illegal work for the revolution. ***

From the same source we read :

Words must have no relation to actions—otherwise, what kind of diplomacy is it? Words are one thing, actions another. Good words are "mask for concealment of bad deeds."

Within the past 6 months Political Affairs, the official organ of the Communist conspiracy in this country (June 1959, p. 24) reaffirmed the Communist's belief in the Marxist doctrine.

Marxist-Leninist guide must be firm.

The announced pattern has not changed. Any American citizen who does not know that the Soviet Government is dedicated to the conquest of the world and is confident of achieving that conquest is either a knave or a fool.

It takes more than a naive person to suggest that the representatives of the Soviets now will not break their solemnly pledged word to exercise their judicial powers impartially and conscientiously merely because their puppet sits on an international court.

EXAMPLE SET BY THE UNITED STATES

Conscientious men always have striven for peace, justice, and freedom. Within the limitations of human frailties to achieve this end, coalitions of peoples historically have been formed. The most successful of these is the union of American Colonies into our great United States.

We have succeeded brilliantly because we started out on firm ground, guided by right precepts. In like fashion the nations of the world will succeed ultimately. But they will succeed only when and if they build their freedoms on substance and not shadow; on actions not words.

Let us not be carried away prematurely by our yearnings for freedom and justice for all only to find ourselves crushed down by our own creation, the World Court.

The principles upon which our Constitution is based, are clearly set forth for all to see. It is obvious in thousands of ways that the other nations want a share of the fruits of its success. Those who do, have the example of a pattern clearly set forth for them to follow. And the United States stands ready to help other countries to achieve a similar goal. Surely it is folly to argue as proponents of Senate Resolution 94 must do, that for the betterment of the world we should descend to the international level and submit ourselves to a globally acceptable body of arbitrary court decisions by offering our hard-won Constitution on a sacrificial altar doomed to useless sacrifice. And rest assured, that is precisely what will happen if our lawmakers fail to remember that he who sups with the devil needs a mighty long spoon.

HAS THE INTERNATIONAL COURT FAILED TO DISPENSE JUSTICE?

Senator GREEN. Thank you very much.

I have a question. You speak of the International Court as though in your opinion it has ceased to function in the manner in which we hoped it would function; is that it?

Mr. GOLDSBOROUGH. Well, the International Court is predicated upon the assumption that it will dispense justice. But an organization comprised of people who do not appreciate, comprehend or understand that word cannot in fact dispense justice. So should we extend its area of activity from the international field of treaties and so forth into deciding what constitutes a domestic or international matter, we have given it large grounds within which to roam.

Senator GREEN. I still fail to understand whether you think that it has failed and is not worthy of our support, or whether you think that it is worthwhile trying to get support for it?

Mr. GOLDSBOROUGH. As it is presently constituted, it is not worth endeavoring to expand.

Senator GREEN. Could it be better constituted to meet your objections?

Mr. GOLDSBOROUGH. Yes, it could be better constituted, but only if one takes into consideration that it can only be composed of those people who have beliefs in rights and justices which are comparable to our own.

Until that time comes, Senator, you will never have a Court of Justice.

Senator GREEN. As a result of that opinion, you think there is no use submitting anything to the Court unless the people who submitted it agree as to what its solution should be? There would be no use in submitting it then.

Mr. GOLDSBOROUGH. No, I simply say they should agree on the concepts of justice; if all do not agree, then you cannot have any valid conclusions.

There are valid grounds of differentiation and differences naturally even among those who believe in justice, but where you draw an individual in who does not believe in justice, then you cannot have a conclusion from that individual which is valid.

Senator GREEN. Then you state that the grounds on which you oppose the Senate resolution are that the Statute is an international court itself?

Mr. GOLDSBOROUGH. Yes, sir.

Senator GREEN. Do you think it could be rewritten to avoid that criticism?

Mr. GOLDSBOROUGH. I certainly do.

Senator GREEN. Don't you want to try your hand at it?

Mr. GOLDSBOROUGH. I don't think it could have been much worse than it is presently constituted, because you have a qualification set up for justices who must sit on that Court, whose qualifications are decided by his own country. Now I submit to you, that if a Russian qualifies as a jurist on the International Court, I would ask you the question, Whose justice will he administer? He is incapable by the mere fact of his being a Communist of dispensing impartial and conscientious justice.

Senator GREEN. I think that we would be very glad to have your views as to how it could be reconstituted to meet your objections and still be worth while.

Thank you very much

Senator CARLSON. Mr. Chairman, I just want to ask this. Years ago I had the privilege of serving in the House of Representatives with Judge Goldsborough. Is this the same family?

Mr. GOLDSBOROUGH. Yes, sir; from Maryland. Thank you, Senator.

Senator GREEN. The next witness is Karl O. Spiess, Sr., president of the Homeowners Federation of Arlington, Va.

**STATEMENT OF KARL O. SPIESS, SR., PRESIDENT, HOMEOWNERS
FEDERATION OF ARLINGTON, VA.**

Mr. SPIESS. First of all, I would like to express our appreciation to the committee for extending these hearings. We were quite surprised when we learned they were only going to be for one day so therefore we are most appreciative to have the opportunity to testify.

THE NATION'S CHIEF EXECUTIVE

Our Government has become a large and complicated structure which requires more attention from the Chief Executive—not less. Each time the Chief Executive absents himself from the duties and responsibilities delegated to him by the Constitution, said functions perforce are handled by some subordinate, possibly an appointee rather than an elected official. The creation of the United Nations at San Francisco is a perfect example, with Alger Hiss “carrying the ball,” and as past history proves, this action has intensified our foreign and domestic problems. It is hoped that this committee will well consider the background of the preparations for the meeting at San Francisco.

George Washington's admonition about refraining from participating in foreign intrigue was absent from the mind of the chief architect of the U.N. Charter, and those with whom he collaborated, as was the Monroe Doctrine.

This doctrine has been respected by foreign nations from 1823 to the present time. Successful arbitration has resulted during that time without a world court between a number of European countries, including Russia and Japan. Incidentally the stature of this country was greatly respected during the year 1902 when President Teddy Roosevelt agreed with the Drago doctrine, which was incorporated into the Hague Conventions in 1907.

It is appropriate at this time to repeat from an article published in the Whig at Palmyra, Mo., on December 30, 1847, under the name “Cin-Atlas”:

Aye, stand by the country. A noble sentiment always stimulating the heart of the patriot. But, what is standing by the country? Is it to assert the infallibility of the Executive and to require the passive obedience of the people? Is the President the country? Are his measures never to be canvassed, except for approval? Is the freedom of thought and speech limited to the applause of his acts, while the right to condemn is denied? Stand by the country, say we. Stand by it in glory and gloom. Stand by it whether the President is right or wrong. When the President is right sustain him and the country; when he is wrong restrain him and thus stand by the country. It is as much the duty of true patriotism to oppose the President when he is wrong as it is to sustain the cause of the country when right. That is the truest test of patriotism. It requires no moral courage to stand by the country when she is right; but it is proof of moral heroism to resist the Executive in doing wrong. Is not this the duty of a Republican patriot? The doctrine that we must stand by the President right or wrong, is only taught by tyrants and only submitted to by slaves. Free men will stand by their country, whether assailed by foreign or domestic enemies, the latter of whom, as being more dangerous, are more to be feared than the former.

NATIONALISM VERSUS INTERNATIONALISM

An odd phenomenon is afoot in our land today, one hard for true Americans to understand. While other nations the world over are with vehemence expressing a violent nationalism, we have in our midst intellectuals and prominent would-be "molders of opinion" in the field of government and sociology who insist that we are living in an international world climate. Our educational systems have been infiltrated with such "intellectuals" preaching a one world philosophy, deriding the free enterprise system and promoting a one world goal.

All around us we see proof of nationalism. It is certainly evident in Russia (and Khrushchev was given the opportunity on a silver platter to bring it to our very hearts); in France, DeGaulle; in Indonesia, Sukarno; in all of Africa, nationalist leaders; in Germany, Adenauer; and on our very doorstep, Castro, not to speak of the leaders in Venezuela and Argentina.

None of these groups are working to make for internationalism. Internationalism, togetherness, brotherhood, would appear to be the bellwether of the intellectual fuzzyheads, dreamers of a Marxian Fabian socialism in the guise of internationalism.

These "pie in the sky" theorists believe nationalism to be one of those shibboleths with which to denounce proponents of compliance with the Constitution. It is used by one world idealists in a derogatory way to damn the sentiment of national integrity and pride, as the cause of war, and a public enemy of brotherhood and coexistence.

Group dynamics as practiced by many liberal groups today results in the kind of thinking expounded by the National Council for the Social Studies, an interlocking adjunct of the National Educational Association, which results in such instructions to teachers of the youngsters of today for conditioning them for the one world takeover of the United States as follows (17th yearbook), page 202:

* * * (2) American history should primarily concern itself with the social and scientific achievements. * * * A quite common notion inculcated in American history classes is that all important inventions, especially in the fields of electricity, gasoline motors and radio are of American origin. Unless we are laboring for a blatantly uncritical nationalism, such indoctrination in error has little to commend it. Moreover, a listing of inventors and inventions (Eli Whitney, Elias Howe, Alexander Graham Bell, Thomas Edison, etc.) has about as much merit as the similar approach to authors and books.

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* * * Most notable has been the impartial series of studies instituted by the Carnegie Corp. such as Gunnar Myrdal's "American Dilemma" (1944) and M. J. Herskovits' "Myth of the Negro" (1941). Herskovits, an anthropologist with historical interests, has attacked the idea that the African came to this country culturally naked and stresses the persistence of the African cultural heritage and its influence on American speech, music, religion, and social organization.

Informed professional groups concur that reasoned patriotism should be the goal in the teaching of American history. For example, on the eve of the Second World War when certain misguided lay groups, including the American Legion and the National Association of Manufacturers, became responsible for the current wave of hostility toward some textbooks in the schools, the American Historical Association declared, "No wonder loyal Americans are ridiculed, 'smeared' with such names as 'superpatriot' in tones of derision and as extremists, in the same vein."

This is the sort of climate which the internationalists are trying to foster, the better to enable them to hoodwink carefree, trusting peoples.

With this wave of togetherness and peaceful coexistence we are faced with the elimination of the Connally amendment, the only deterrent to the maintenance of that sovereignty which was cornerstoned by the founding statesmen of this great land. Such an action will result in an impairment of American sovereignty and will be the means of fruition for the one-worlders and internationalists in our midst.

FREEDOM FROM FOREIGN ENTANGLEMENTS

There appears to be no real advantage to the United States in belonging to the World Court since we will be greatly outnumbered in membership on said Court, which will include justices who have matured in an environment and judicial climate foreign to our own. It is only reasonable to assume that national ties and interests will outweigh, subconsciously, if not consciously, any matters before the Court.

The idea of accepting the jurisdiction of this Court is foreign to our accepted and acknowledged history of freedom from foreign entanglements. If the following international incidents were not amicably settled, it would indicate that the will to peaceful coexistence is nonexistent and no court, world or otherwise, will change the temper: The Triple Alliance of 1882 (Germany-Italy-Austria-Hungary); 1904 (Entente Between France and England); Anglo-American understanding, 1898; Nine Power Treaty of February 6, 1922 (arms limitation); Kellogg-Briand Peace Pact, August 27, 1928; Chinese Eastern Railway feud with Russia; and the Japanese-Chinese fiasco; the Italian-Ethiopian difficulty; World War II, and, finally, the Korean "police action."

Article 43 of the United Nations Charter states that all member governments undertake to make available to the Security Council "armed forces, assistance, and facilities, including rights of passage." and that the Security Council may use these armed forces to—

take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security.

It is not hard to see how this might be interpreted by judges who had been appointed to this World Court by powers favorable to a one-world coexistence, togetherness philosophy. Of course the orders of this Court could be enforced.

Are you gentlemen aware of the training of the men in the military government reserve units in 1951? Yes, we did see it here. On July 31, 1951, a simulated invasion was perfected. Nine California cities, Compton, Culver City, Inglewood, Hawthorne, Huntington Park, Long Beach, Redondo Beach, South Gate, and Torrance were invaded by "forces" carrying the United Nations flag, if you please, and their officers informed the city officials that they represented the United Nations. The mayors and police chiefs were arrested and later their pictures appeared in the newspapers behind bars. Manifestos were issued, reading, "By virtue of the authority vested in me by the United Nations Security Council." At Huntington Park they had a flag-raising ceremony where the American flag was replaced with the United Nations flag.

On April 8, 1952, other units did the same thing at Lampasas, Tex. They took over the town, closed churches, strutted their authority

over the teachers and posted guards in the classrooms, set up concentration camps, and interned businessmen after holding brief one-sided trials without habeas corpus.

The invaders put posters listing many offenses for which citizens could be punished. One of them read:

25. Publishing or circulating or having in his possession with intent to publish or circulate, any printed or written matter * * * hostile, detrimental or disrespectful * * * to the government of any other of the United Nations.

The third practice seizure under the United Nations flag occurred at Watertown, N.Y., on August 20, 1952, more than a year later than the first ones. It followed the same pattern set in the earlier seizures at California and Texas.

INTERNATIONAL JURISPRUDENCE

From a U.N.-advertised book, "The United Nations 10-Year Legal Progress," a collection of essays published in The Hague, 1956, is taken from the heading, "The Development and Codification of International Law," pages 46-47, a quote by Dr. R. Cordova of Mexico, one of the 15 judges of the United Nations International Court. I quote:

In accordance with the terms of the San Francisco charter, the aim of the United Nations is the Constitution of a worldwide union for the maintenance of international peace and order by means of the political organization of force. None of the articles of the charter subordinates the use of force to the law; reference is made to peace-loving nations, but never to law-abiding nations; the charter does not require that the use of force be subjected to the principles of justice or to the decisions of a judicial organ empowered to define the lawful and to distinguish it from the unlawful and to maintain the relations between states within the limits of the law.

The San Francisco charter is merely a renewed attempt to establish an international political regime based on the balance of power, without any foundation upon the supreme authority of the law. The five most important states of the world imposed upon all other nations a compulsory political jurisdiction of an international tribunal, thus making it impossible for themselves and for other nations to establish the rule of international relations between the states.

Dr. Marek Korowicz, member of the communistic Polish delegation to the U.N.—eluded his guards and sought refuge in the United States—testified:

The Communist Party regards the U.N. as the most important platform for Soviet propaganda in the world * * * the U.N. offered a platform for them to preach to the entire world and carry on their subversive propaganda.

The war criminal tribunals in Germany have set a precedent of international jurisprudence. The persons who executed the policies of a regime dictated by "the conscience of society" in their own country, carrying out orders of superiors, were summarily tried, convicted and sentenced. The situation could possibly have been reversed and another conscience of society could have prevailed, to the detriment of the interest of the United States.

Thus, the current wave of internationalism and the existence of the Genocide Pact, which would effect us materially, gives thought for sober considered reflection. It is hoped that the sponsors of Senate Resolution 94 are proceeding with a clear conscience and are prepared to accept the fruits of a shackled Constitution.

FINANCIAL INVOLVEMENT OF THE UNITED STATES

The United States has become involved financially all over the world. Just recently the World Bank has asked that 68 member nations ratify the agreement for the International Development Agency.

We have spent taxpayers' money contrary to the Constitution, we believe, to establish industries in foreign lands. Billions of dollars have been appropriated for the Marshall plan. And our gold reserves are in a precarious condition. With all the ramifications involved with the myriad of foreign transactions it will assuredly open a Pandora's box for citing cases before this World Court. The decisions of the Supreme Court in *U.S. v. Pink* (315 U.S. 203) and *U.S. v. Belmont* (301 U.S. 324) are interesting from this point of view.

Recently a meeting of the northern Virginia charter of the United World Federalists was held. The starry-eyed proposition was advanced that if we stopped spending for our defenses we could eliminate the income taxes. Plans were presented for getting favorable action on this bill. It is frightening to realize the thinking of some of our citizens who have so much to lose if this Connally amendment is eliminated.

AFFECTING U.S. INTERESTS

One is more horrified, when he reads in the papers statements by persons in position to use tax-free money to espouse their liberal thinking, such as the following quotes from Robert M. Hutchins of the Fund for the Republic, a gross misnomer. I quote:

Traditional ideas of freedom and justice need thorough reexamination in the light of changing world conditions.

In the *Barthkus* case, decided by the U.S. Supreme Court last March (1959), Justice Frankfurter opined that—

The Anglo-American system of law is based not on transcendental revelation but upon the conscience of society—ascertained as best it may be by a tribunal disciplined for the task and environed by the best safeguards for disinterestedness and detachment.

Does not this opinion border on the fears expressed by many at these hearings regarding the thinking of the judges of the World Court?

Much has been said about the Panama Canal and the treaties we have with the Government of Panama, and how the World Court would affect the interests of the United States. Well, the Monroe Doctrine, which Mr. Mikoyan has so recently flaunted, and other treaties, have long ago established our interests there. But for the sake of political expediency, and an adjustment to what Justice Frankfurter prefers to call "the conscience of society," and what Robert Hutchins believes in, "traditional American ideas need to be reexamined." Certain supine statesmen and editorial writers suggest the idea that we internationalize the Panama Canal. Past experience and history prove that the first sign of weakness by a nation is the signal for a stronger nation to exercise possession and ultimate power, one over the other.

With this sort of thinking abroad in this Nation, it is believed that this committee should well understand that it would be very easy, if Senate Resolution 94 is approved, to see the first break in the dike of freedom in the United States.

REASONS FOR NOT APPROVING SENATE RESOLUTION 94

Many reasons have been advanced to this committee in opposition to Senate Resolution 94, with which we heartily concur.

We would suggest that this measure be defeated for the following reasons:

1. All appearances indicate a first step to internationalize the citizens of the world into a one-world dictatorship.
2. Our American system of jurisprudence would be substituted to an embryonic system of doubtful value.
3. The United States would have too little to say about the selection of judges for the World Court.
4. It will impinge the sovereignty of the United States.
5. There will be no appellate tribunal or provisions for same.
6. Nomination procedure is faulty and inimical to the interests of the United States; the judges take no oath and impeachment proceedings are nil.
7. Secret hearings possible behind closed doors and because of appointive procedures, it is believed that judges will be ones who are unfamiliar with an environment of freedom and liberty, thereby resulting in decisions based on popular world sociological and ideological philosophy.

RETAINING OUR FREEDOMS

George Washington was very meticulous about becoming involved in foreign intrigue, apropos his quoted statements:

Against the insidious wiles of foreign influence (I conjure you to believe me, fellow citizens), the jealousy of a free people ought to be constantly awake since history and experience prove that foreign influence is one of the most baneful foes of republican government. * * * Real patriots who may resist the intrigues of the favorite are liable to become suspected and odious; while its tools and dupes usurp the applause and confidence of the people, to surrender their interests. * * * If we remain one people, under an efficient government, the period is not far off when we may defy material injury from external annoyance; when we may take such an attitude as will cause neutrality, we may at any time resolve upon, to be scrupulously respected; when belligerent nations, under the possibility of making acquisitions upon us, will not lightly hazard the giving us possible provocation; when we may choose peace or war, as our interest, guided by justice, shall counsel. Why forego the advantage of so peculiar a situation; why quit our own to stand upon foreign ground? Why be interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalry, interest, humor, or caprice?

It has been said that the World Court has no power to enforce its edicts once arrived at. Our President has stated that if the United States would accept a rule of law and withdraw our self-judging aspect, it would strengthen the position of the United States. It has been stated that the judges appointed to this Court could be trusted, that no doubt they were men of integrity. However, it was Thomas Jefferson who stated that he did not want to take any chances with "government by men" in place of "government by law." He said:

It would be a dangerous delusion if our confidence in the men of our choice should silence our fears for the safety of our rights. Confidence is everywhere the parent of despotism. Free government is founded on jealousy, not in confidence. It is jealousy, and not confidence, which prescribes limited constitutions to bind down those whom we are obliged to trust with power. * * * In questions of power, then let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.

And a more significant foresight of Mr. Jefferson was, "When all government shall be drawn to Washington, as the center of power, it will become venal and oppressive." We have experienced some of this wisdom, so let us not fall into a "one world concentration of power" trap. Let us retain the Connally amendment, and our freedoms which by hard experience and hardships we have been able to maintain. Let us not be taken in by the power play of the United World Federalists.

These United States were founded as a Christian nation, and notwithstanding some efforts to change it, the Supreme Court has constantly held this to be true. The United Nations is composed of nations, some of which do not believe in God, a sort of mixture of the true and the false. This World Court will be the heartbeat of a non-Christian alliance. Thus, we wish to close with the prayerful admonition of our beloved first President:

Almighty God, we make our earnest prayer that Thou wilt keep the United States in Thy holy protection; that Thou wilt incline the hearts of the citizens to * * * entertain brotherly love and affection for their fellow citizens * * * to love mercy and to demean ourselves with that charity, humility, and pacific temper of mind which were the characteristics of the Divine Author * * * without a humble imitation of whose example in these things, we can never hope to be a happy nation. Grant our supplication, we beseech Thee, through Jesus Christ, our Lord.

And to this we say a reverent amen.

Mr. Chairman, we thank your committee for this opportunity to express our views.

Senator GREEN. Thank you. I understand, I hope correctly, that you are opposed in principle to the undertaking that we have been discussing.

Mr. SPIESS. That is correct; yes, sir.

Senator GREEN. Have you any questions?

Senator CARLSON. No, sir.

Senator GREEN. Thank you. The next witness is Mrs. Myra C. Hacker, chairman, foreign affairs, National Association of Pro America, West Englewood, N.J. Mrs. Hacker, will you proceed, please?

STATEMENT OF MRS. MYRA C. HACKER, CHAIRMAN, FOREIGN AFFAIRS, NATIONAL ASSOCIATION OF PRO AMERICA

Mrs. HACKER. Thank you, Senator. I concede it a great honor, privilege, and pleasure to present my testimony to this distinguished committee. I am Myra C. Hacker. I reside at 1545 Warwick Avenue, West Englewood, N.J. I am speaking for the National Association of Pro America. I am offering for the record in addition to my own statement a statement of the national president of Pro America, a statement from the various State chapters of New Jersey, Texas, west Texas and New Mexico, Oklahoma, the State of Washington, and California.

I will start reading from my statement.

OPERATION OF THE RESERVATION

The Connally amendment or reservation permits the United States to decide what disputes it will submit to the International Court of Justice. Six words—the Connally amendment—tacked on to the Morse

World Court resolution, 1946, provided that America would not accept the compulsory jurisdiction of the World Court in matters which are essentially within the domestic jurisdiction of the United States as determined by the United States. These six words stand between our country and inevitable additional loss of sovereignty; their deletion could hasten our entry into world government.

Senator Humphrey introduced Senate Resolution 94 March 24, 1959, which seeks to repeal the Connally amendment, that is to strike the six words "as determined by the United States" from the former 1946 resolution of Senator Morse.

By so doing the Humphrey resolution aims simply to take away from the United States the right formerly reserved to our own country to determine which cases affecting the United States and its citizens should come before the International Court of Justice. This is the crux of the Humphrey amendment as embodied in Senate Resolution 94.

RESOLUTION SEEKS TO REACTIVATE THE INTERNATIONAL COURT

It is apparent that the Humphrey resolution seeks to reactivate the International Court, which has admittedly settled less than one case a year since its inception some 13 years ago. In order to fill this empty court with cases and give it the authority to order us around and thus as they say, to "substitute rule by law for rule by terror," the first step would be to repeal the clause known as the Connally amendment, which reserves to the United States the right to determine which cases involving our country are domestic issues and therefore not subject to international jurisdiction.

In other words, the effort is being made to empower a body of 15 judges, 14 of them non-Americans, sitting in a foreign land, to decide what matters concerning the United States they shall pass judgment on—and to make those judgments binding upon all of us. Where, then, would be the sanctity of our own institutions?

Where would be our sovereign standing as a nation?

All great nations die from within—liberties are always surrendered under a delusion.

World peace is a consummation devoutly to be wished for, and rule by law is a principle to which our Nation has had a lifelong dedication, but the combining of the two phrases into a single shibboleth involves an oversimplification which is both misleading and dangerous. It also obscures a purpose which is far from simple or straightforward and which would, if achieved, spell disaster for our American way of life.

DIFFERING PRINCIPLES OF LAW

Americans are fond of slogans. They enjoy them without too much appreciation of their meaning and implication. We waged a war for democracy in World War I, which ended with a dictatorship in most of Europe. In World War II we fought for the so-called four freedoms and ended up with totalitarian powers dominating more than half the world with no God-given rights or liberties.

The new panacea is "world rule by law" which envisions a super-court backed by a body of world law.

It has been spearheaded by a portion of the American Bar Association which in its eagerness to find a common denominator of legal principle for the entire world, forgets that what it calls the well-known principles of law are radically different in various parts of the world.

As the State Bar Association of Texas has pointed out, the World Court is not, and would not be, bound and guided by the British common law, the American system of constitutional law, or the guarantees of individual rights which we hold sacred, and would therefore tend to follow its own judgments or the courses which the pressures upon it determine. And so our birthright of justice based upon God-given rights would be traded for a very watery mess of pottage.

SOVIET INTENTIONS

"One thing is certain," says the Committee on World Peace Through Law of the American Bar Association, "the Russians have a profound psychological desire to be considered a modern, enlightened, civilized nation."

Consider the treacherous butchery in Hungary; consider the missile rattling and the general truculence of Nikita Khrushchev on his American visit, and one wonders just how naive an eminent body of lawyers, bent on spreading their brand of jam on everybody's bread, can become about the noble aspirations of a confessed and blatantly aggressive dictatorship, which is working actively for our downfall. It seems that they forget the supreme political fact of our era, that there are certain totalitarian powers that are determined to bring about the downfall of every free nation by force or subversion.

Another proponent of this deceptive panacea for a dominant World Court said:

A major missing element in our agreements with the Soviet leaders has been any provisions as to how disputes about the meaning of the agreements in connection with their implementation could be decided.

In spite of communism's repeated assertions that contracts should be taken seriously only as long as they are unilaterally expedient, he innocently explained the failure of the Geneva summit conference's agreement on Germany by the hypothesis that Khrushchev's "understanding" of its meaning "was ostensibly different from ours," and that he would have adhered to it better if a supercourt had clarified it for him. Shutting his eyes to the Machiavellian philosophy of Kremlin diplomacy (of which in his position he cannot be unaware), he proposes under a strengthened International Court a "competition * * * in a context of justice" between the Communist and the free world. "Then," he adds, "we could say without hesitation: Let the stronger system win, knowing that both systems would be moving in a direction of world peace."

We shudder to envision this competition which he nods at if, under the plan he advocates, we yield our national sovereignty and our strength and freedom of instantaneous action. Soviet Russia prides itself on taking advantage of the weakness of good people and good nations.

It is assumed, rather rashly, that most of the nations would initially ratify such a charter, with the holdouts joining soon after to get out

of the cold. Just what would happen to us once we dumped our unique rights and protections as Americans unto a common legal pool with the slave subjects of the dictatorships is not outlined. We already know that American servicemen, on duty in foreign parts, lose for the duration the protection of American law, and world peace through world law does not, understandably, sketch the power scramble which would ensue if, in the world, were but one dominant court with one executive and one sole army to enforce its wishes.

DANGERS OF SENATE RESOLUTION 94

Following are some points that illustrate the impossibility and the danger of Senator Humphrey's abolition of the Connally amendment, in the foreseeable future:

1. It is essential to oppose giving the International Court power and authority to determine what matters are domestic and what international, because many members of this Court, as well as many high officials of our State Department and Government no longer recognize any real distinction between domestic and foreign affairs. From their standpoint immigration is not domestic, education is not domestic, civil rights are not domestic, our Panama Canal is not domestic. Every one of the world government plans, political, economic, military, welfare, and propaganda, could be linked together if the International Court were no longer barred from ruling on what are domestic issues.

2. The opponents of the Connally amendment assume that its retention has been one of the major reasons for the failure of the nations to submit their disputes to the World Court. One wonders just how major a reason it is if it is a reason at all. There have been many disputes in the last 10 years, truly international in character, which might properly have been submitted to the Court. One is the present Berlin crisis, another the Suez crisis, and there have been others.

3. Mr. John Foster Dulles, in his address to the New York State Bar Association January 31, 1959, appears to have been opposed to any present increase of the power of the present World Court by the simple elimination of the Connally amendment.

4. There can be no general agreement on law in the United Nations or world law in the foreseeable future. Law cannot be formulated on a national or international basis without a common basis of morality and common standards of justice. The conflicts are political, not judicial. They are concerned with power—with the prior question of whose law is to then be the law. How much Hungarian law was permitted by Russian forces in Hungary, or Tibetan law in Tibet by Red China? Throughout history, the so-called rule of law, as our forefathers knew, was established by force, not good will.

All rights under the U.N. come from government, not from God or the spiritual nature of man, and this law becomes simply an administrative expedient subject to the whims of the governing bodies. With dictatorship countries like Russia and Red China, where the individual exists for and at the mercy of the state, we can find but little common grounds on legal fundamentals.

The proponents of the super World Court forget that, historically, every attempt at world control has been countered by force and has led to eventual disintegration with the less civilized, less altruistic power ruthlessly grabbing the reins from the more highly cultured.

If we are to study the cycles of the ages, if we are to be guided by the lessons of the past, let us remember that a nation which overreaches itself always falls headfirst into the mire.

That is why we must resist the repeal of the Connally amendment. To give an International Court the right to adjudicate, against our wishes, matters which we consider our domestic concern would be to take a keystone from under the foundation of our Constitution.

The truth is that we in America believe that the rights of the individual are natural rights; that is, they are inherent in the nature of man and the universe; they came from God. That belief is the basis of our Declaration of Independence, our Constitution, our Bill of Rights.

Government in the United States under our Constitution, is therefore the servant of the citizen representing him among nations and performing for him at home those functions which the individual cannot accomplish alone.

Legislators and executives, Federal, State, and local, are accordingly elected to represent and further the interests of the voters.

We must preserve the constitutional guarantees that protect our God-given rights from governmental encroachment.

Distinguished Senators, for those principles of American Government that are above party and personality. I ask your best efforts for their preservation so that the liberty that was yours, was mine and must be our children's shall be preserved in this generation. I ask your rejection of Resolution 94.

Senator GREEN. Thank you very much.

Are you satisfied with the proposals that have been made today, or do you think it is this or nothing? Do you have any practical suggestions as a substitute for what is proposed today that we have been talking about?

Mrs. HACKER. I feel unless we have a common basis of morality and common standards of justice, it would be impossible to have any control.

Senator GREEN. Have we such a common standard?

Mrs. HACKER. Not in the world, no.

Senator GREEN. Well, let's hope we meet then in Heaven.

Mrs. HACKER. I can appreciate that.

(Mrs. Hacker's prepared statement and the documents referred to follow:)

STATEMENT BY MYRA C. HACKER, NATIONAL ASSOCIATION OF PRO AMERICA

The Connally amendment or reservation permits the United States to decide what disputes it will submit to the International Court of Justice. Six words (the Connally amendment) tacked on to the Morse World Court resolutions, (1946) provided that America would not accept the compulsory jurisdiction of the World Court in matters which are essentially within the domestic jurisdiction of the United States "as determined by the United States." These six

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It is apparent that the Humphrey resolution seeks to reactivate the International Court, which has admittedly settled less than one case a year since its inception some 13 years ago. In order to fill this empty court with cases and give it the authority to order us around, and thus, as they say, to "substitute rule by law for rule by terror," the first step would be to repeal the clause known as the Connally amendment, which reserves to the United States the right to determine which cases involving our country are domestic issues and therefore not subject to international jurisdiction.

In other words, the effort is being made to empower a body of 15 judges, 14 of them non-Americans, sitting in a foreign land, to decide what matters concerning the United States they shall pass judgment on—and to make those judgments binding upon all of us. Where, then, would be the sanctity of our own institutions? Where would be our sovereign standing as a nation?

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clarified it for him. Shutting his eyes to the Machiavellian philosophy of Kremlin diplomacy (of which, in his position, he cannot be unaware), he proposes, under a strengthened International Court, a "competition * * * in a context of justice" between the Communist and the free world. "Then," he adds, "we could say without hesitation: Let the stronger system win, knowing that both systems would be moving in a direction of world peace."

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3. Mr. John Foster Dulles, in his address to the New York State Bar Association January 31, 1959, appears to have been opposed to any present increase of the power of the present World Court by the simple elimination of the Connally amendment.

The address reveals his complete distrust of the system of "world peace through world rule" which he states is the creed of international communism. He states "Furthermore law to Communists means something very different than to us. To them laws are essentially the means whereby those in power suppress or destroy their enemies." He was known as a believer in the United Nations, yet we have reason to think he envisioned a tribunal built upon nations with common standards and with agreement on some basic principles.

4. There can be no general agreement on law in the United Nations or world law in the foreseeable future. Law cannot be formulated on a national or international basis without a common basis of morality and common standards of justice. The conflicts are political, not judicial. They are concerned with power—with the prior question of whose law is to be the law. How much Hungarian law was permitted by Russian forces in Hungary, or Tibetan law in Tibet by Red China? Throughout history, the so-called rule of law, as our forefathers knew, was established by force, not good will.

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If we are to study the cycles of the ages, if we are to be guided by the lessons of the past, let us remember that a nation which overreaches itself always falls headfirst into the mire.

That is why we must resist the repeal of the Connally amendment. To give an international court the right to adjudicate, against our wishes, matters which we consider our domestic concern, would be to take a keystone from under the foundation of our Constitution.

Further, since the Court, itself, would decide what it would or would not accept, the Pandora's box of all sorts of tyranny would be opened wide.

The truth is that we in America believe that the rights of the individual are natural rights; that is, they are inherent in the nature of man and the universe, they come from God. That belief is the basis of our Declaration of Independence, our Constitution, our Bill of Rights, and the vast majority of our court decisions.

Government in the United States, under our Constitution, is therefore the servant of the citizen, representing him among nations and performing for him at home those functions which the individual cannot accomplish alone. Legislators and executives, Federal, State, and local, are accordingly elected to represent and further the interests of the voters. Both the rights of man and the law itself should be supreme over the members of government. We must preserve the constitutional guarantees that protect our God-given rights from governmental encroachment.

Distinguished Senators, I ask your rejection of the Humphrey resolution, Senate Resolution 94, as a threat to our sovereignty and a dangerous surrender of our basic liberties to a World Court which has no attributes of a court under U.S. law. This resolution could be a step backward in the history of liberty and an unwarranted extension of governmental powers. The history of liberty is the limitation of the powers of government.

We recognize and must preserve the careful constitutional system of checks and balances in which the President, Congress, and the courts are subordinate to the Constitution. We must preserve the constitutional guarantees that protect our God-given rights from governmental encroachment so that at all times we have a government of laws and not of men. The American Constitution is built on the basic principle of limited government.

This concept of limited government is uniquely American and is the primary reason for the great material and spiritual development of America and under which liberty for the first time became an actuality.

Yet, we are asked to repeal the Connally amendment, to pump our blood into the International Court, so that its empty halls may be filled with cases concerning us, so that its assorted judges—1 American and 14 Russian, Polish, Chinese, Latin American, and other foreign nationals—may tell us how to behave and wield the big stick if we demur.

Why anyone in this country should desire us to assert our world leadership by first committing national suicide is the mystery of this generation. Do they not realize that an America shackled by the domination of foreign ideologies and hamstrung by the weakness of foreign economies and policies can be of little use to itself or to the world at large?

I ask your rejection of Senate Resolution 94.

NATIONAL ASSOCIATION OF PRO AMERICA,
January 27, 1960.

HON. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR SIR: Believing, with you, that it is the solemn duty of our elected representatives to protect this Nation from foes within and without who would reduce our people to that estate from which we rose when we became a free people some 180 years ago, and it is also their solemn duty to direct our Government to recognize its statutory limitations and to keep the liberty so hardly won, the National Association of Pro America has repeatedly stated its belief in the institutions of the United States. We do now come before this committee of the U.S. Senate urging that no action be taken which would recommend to the Senate that it allow any body, regardless of how it be constituted, to assume—or even to share—the right of the United States to determine for itself whether a matter be domestic or not.

We ask the question, Senator Fulbright and gentlemen of the committee, "What universal code of law or jurisprudence can in justice and equity be cited, upon which can be based a determination of questions brought before an international court, when each nation which becomes a party thereto has—and properly—its own system of justice and its own comprehension of equity?"

The citizens of this Nation should make no apology for choosing to be heard by their own judges, in their own courts, according to their own system of laws, and in the light of their own mores. These protections to freedom must be upheld not only for our own sakes, but as illustrious examples to those others in the world who have been less fortunate in their heritage or who live, voluntarily or otherwise, by and under other forms of government more suited to themselves. No man, and no combination of men or nations, gains either the respect of others or the possibility of becoming a living example to others, if he compromises his own standards to become like unto those whom he hopes to encourage to seek greater ideals and implement them, each in his own way. You can permanently lift no man or nation by force; but you can set for him an example, and give to him a helping hand when he looks for assistance in attaining his own interpretation of that which you have attained.

We would point out, and most respectfully, that it was not only by conceding that our concept of government was difficult to keep, and that our people might themselves not always be strong enough or wise enough to maintain it, that our Founding Fathers made for us this bastion of freedom and justice under God. They also fenced in the power of the general government and asserted to the people that in it they had the finest concept of men's minds which they, the people, must respect and work for without cessation all the days of their lives. The finest structure will endure only if its sworn protectors stand firmly in the path of ideas which would weaken or destroy. We request that you honorable gentlemen will thus firmly stand between the sovereign citizens of this Nation and ideas which, however well intentioned, are different, and less than protective of our rights.

An International Court of Justice to sit on those disputes between countries which are voluntarily agreed between the parties thereto, is quite proper, whether or not such court is widely used or even widely acclaimed. To invite such a court to adjudicate disputes not voluntarily submitted—by any country—is to result in a futility of decision and consequent debasement of the court, or, to imply that its decisions can be enforced upon any country which is involuntarily concerned. This would result either in chaos, or in the world rule not of law, but in the world rule of force.

The intrusion into the domestic affairs of our Nation by any external body, for any reason, is not to be tolerated by those who are the proud citizens of this Republic. To suggest that intrusion would never happen is conjecture; what is contemplated is the granting of the right from which such possibility is the legal sequitur. No such grant should be permitted, we are convinced, by those whom the people chose to act for them in this august body.

Further, we believe that this Nation should never agree to be a party to any international agreement, such as the one under consideration, which could lead to our own official approval of interference in the internal affairs of another nation. This seems to us to be no way to make friends and advance the cause of peace.

Thank you for the opportunity to express these convictions on behalf of the National Association of Pro America, whose members I serve as president.

Respectfully yours,

MARY ELIZABETH SNOW
Mrs. John Howland Snow.

RE THE WORLD COURT—RESOLUTION SUPPORTING RETENTION OF THE CONNALLY AMENDMENT

(Unanimously adopted by the New Jersey Chapter of the National Association of Pro America, December 10, 1959)

Whereas we believe in the principle of self-determination and home rule for nations; and

Whereas there is not at this time, and will not be in the foreseeable future, any common basis of morality and standards of justice among the nations of the world; and

Whereas the interests of the United States have already been adversely affected by the World Court; and

Whereas the jurisdiction of the World Court without the Connally reservation would subject the United States to foreign control and the beginning of world government: Therefore, be it

Resolved, That we oppose any and all attempts to repeal the Connally reservation which limits the jurisdiction of the World Court to purely international affairs and guarantees self-determination to the citizens of the United States and the maintenance of our sovereignty.

MYRA C. HACKER,
Mrs. Ralph E. Hacker,
Chairman of Legislation.

DALLAS, TEX., January 26, 1960.

Mrs. RALPH HACKER,
Washington, D.C.:

Texas chapter Pro America favors retention of Connally amendment.

Mrs. WILLIAM L. CRAWFORD, *Secretary.*

Whereas the Connally reservation resolution of the Texas Bar Association expresses the views of Pro America, be it resolved Pro America endorse the Texas Bar Association resolution as follows:

"Whereas a proposal to subject the United States to the compulsory jurisdiction of the Court of International Justice (commonly and hereafter called the World Court) has recently been submitted to the Senate of the United States (S. Res. 94, Congressional Record, pp. 4510-4513), whereby if adopted this Nation would relinquish completely its power to determine unilaterally that any case brought against the United States in the World Court is exclusively within its domestic jurisdiction, and therefore wholly beyond the jurisdiction of the World Court, that power having been preserved to the United States by the Connally resolution of 1946 (S. Res. 196, 70th Cong. 2d sess.) and

"Whereas the World Court is composed of 15 members or judges, of which 1 is a citizen of the United States and the others are nationals or citizens of Egypt, Nationalist China, Australia, Greece, Poland, France, Mexico, El Salvador, Britain, Argentina, Uruguay, Norway, Pakistan, and Soviet Russia: that is, 2 are from Moslem nations, 1 is a Chinese, 2 are Communists, 3 are from common law countries, 4 are Latin Americans, and 1 each is from Greece, France, and Norway, the President of the Court being a Norwegian and the Vice President from Pakistan; and

"Whereas the World Court is a tribunal in no way bound to or guided by any definite rules or a system of law such as the common law or the American system of constitutional law, and it is therefore entirely free, by the statute of its creation to follow to whatsoever judgment they may lead in any particular case, the whims and caprices engendered from time to time by national pride or interest, envy, greed, or actual hostility: in other words, the World Court is clearly subject to the criticism voiced by Thomas Jefferson when he wrote, 'Let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution'; and

"Whereas the jurisdiction of the World Court includes 'all matters specifically provided for in the Charter of the United Nations or in treaties and conventions in force' (statute, art. 36), and the Charter of the United Nations expressly excludes from its jurisdiction 'matters which are essentially within the domestic jurisdiction of any state' (charter, ch. 1, art. 2, par. 7), nevertheless, one of the first actions of the General Assembly of the United Nations was, by vote, to override the contention of France that matters in controversy between its government and the people of Algeria were matters 'within the exclusive domestic jurisdiction' of France, on the ground that Algeria was not a colony but was an integral portion of the Republic of France; and there is no reason to expect that the World Court or any other portion of the machinery of the United Nations may not likewise overrule any contention of the United States that any other matter is 'essentially within its domestic jurisdiction' if this country should surrender its power, now expressly reserved, to determine that question unilaterally; and

"Whereas it has been claimed that the Court's paucity of business (10 or 11 cases decided in more than 10 years) is due to the fact that few if any nations have submitted themselves unreservedly to the jurisdiction of the Court (those not so submitting unreservedly including the United States and all the Communist nations), although it may as readily be inferred that few if any countries are sufficiently imprudent, under the circumstances herein recited, to submit to the unpredictable judgments of such a tribunal questions that they may regard as being 'essentially within their domestic jurisdiction'; and

"Whereas relinquishment by the United States of the power to determine unilaterally that any case brought against it in the World Court is exclusively within its domestic jurisdiction would:

"(a) seriously impair the sovereignty of the United States and of the several States composing it;

"(b) effectively vest the power to amend the Constitution of the United States in a tribunal essentially foreign, not necessarily competent, probably political rather than juridical in its attitudes and decisions, possibly dominated by our enemies and therefore likely disposed to be hostile to the major interests of the United States; and

"(c) unnecessarily and dangerously weaken and impair the ability of the United States to defend itself against enemy aggressors;

and

"Whereas the proposal so made, and now pending before the U.S. Senate, is being vigorously supported (without, we think, an adequate understanding or appreciation of its reach or dangers) by many influential public officers, individuals and national organizations, who may succeed, in the absence of determined opposition, in having the said proposal adopted by the Senate; and

"Whereas the members of the State bar of Texas are not only devoted to our State and National Constitutions and forms of government, but are bound by oath to support and defend those Constitutions: Now, therefore

"The State bar of Texas, in annual session assembled at Dallas, does hereby resolve:

"1. That it does hereby condemn, as unwise, un-American, and extremely dangerous to posterity as well as to American citizens now living, the proposal contained in the Senate resolution mentioned above.

"2. That a certified copy of this resolution be promptly sent to the President and Vice President of the United States, to each of the U.S. Senators from Texas, and to the president of the American Bar Association.

"3. That each member of the State bar of Texas is hereby urged to write, as soon as may be, to our Texas Senators urging them, as they love their country, to vote against the proposal, and to use their influence with other Senators to do likewise.

"Respectfully submitted by:

"ROBERT H. KELLEY.

"WM. E. LOOSE.

"NOWLIN RANDOLPH.

"W. H. EVERETT.

"WILLIAM P. LONGCOPE.

"W. JAMES KRONZER."

CONNALLY AMENDMENT

Oklahoma executive board of Pro America agreed upon the substance of the resolution below, January 28, 1960. Whereupon a telegram was dispatched in abbreviated form to Senator Fulbright.

"Whereas there can be no agreement on law in the United Nations because law cannot be formulated on a national or international basis without a common basis of morality and common standards of justice; and

"Whereas all rights under the United Nations come from government and not from God or the spiritual nature of man; and

"Whereas an America shackled by the domination of foreign ideologies and hamstrung by the weakness of foreign economies and policies can be of little use to itself or to the world at large: Therefore, be it

"Resolved, That the National Association of Pro America urge the Congress and the Senate of the United States of America to retain the reservations of the Connally amendment which provides that America will not accept the compulsory jurisdiction of the International Court of Justice in matters which

are essentially within the domestic jurisdiction of the United States as determined by the United States.

"Whereas the public pronouncements of the President of the United States and the Attorney General urging the nullification of the Connally amendment are not persuasive; Therefore, be it

"Resolved, That the Pro America State board in session urge the Senate of the United States to retain the reservations of the Connally amendment, and ask that this be read into the records of the Foreign Relations Committee."

Passed by the State board of Pro America in Oklahoma, January 28, 1960, Oklahoma City. Forwarded by telegram to Senator J. W. Fulbright, chairman of the Foreign Relations Committee.

TACOMA, WASH., *January 25, 1960.*

Mrs. RALPH B. HACKER,
West Englewood, N.J.:

Washington State Chapter of Pro America after careful study strongly urges retention of Connally reservation and asks that this statement be included in your testimony before Foreign Relations Committee.

ERDINE SCHWAN,
State President, Pro America.

PRO AMERICA OF WISCONSIN RESOLUTION ON SENATE RESOLUTION 94

(Passed unanimously by the board and entire membership, January 25, 1960)

Whereas under the act of 1946 recognizing World Court jurisdiction in international matters, the United States through the Connally amendment reserved the important right to decide whether cases involving this country are domestic or international; and

Whereas the United Nations Charter, chapter I, article 2, specifically states that its powers "shall not extend to matters * * * essentially within the domestic jurisdiction of any states"; and

Whereas Senate Resolution 94 now before the U.S. Senate would surrender American power over domestic affairs, and a quorum of five votes in the World Court could issue a decree which would become compulsory upon the United States, thus eliminating completely the protection secured by the U.S. Senate in 1946 in respect to the terms under which the United States accepted the Charter of the United Nations; and

Whereas Senate Resolution 94 would ultimately wipe out all liberties of the people of free America: Therefore be it

Resolved, That the Wisconsin Chapter of Pro America hereby petitions the members of the Foreign Relations Committee in the best interests of the American people whom they represent, to kill this quasi-treasonable action as outlined in Senate Resolution 94; and we further request that this communication be read into the hearings on Senate Resolution 94.

RESOLUTION FOR RETAINING THE CONNALLY AMENDMENT TO THE INTERNATIONAL COURT OF JUSTICE TREATY BY THE CALIFORNIA CHAPTER OF PRO AMERICA

A PECULIAR NATION THEREFORE WE REQUIRE OUR OWN LAWS

Whereas sovereignty in the United States of America resides with the people, the Nation having been established by the joint and voluntary efforts of people who had a common language, code of morals, religion, environment, and historical background which included a century and a half of similar experiences and development as colonies; and

Whereas the sovereignty is vested in the people, they alone have the power and the right to determine the concept of their rights and to choose their laws and enforce them;

CONDITION UNDER WHICH U.N. CHARTER WAS ACCEPTED

Whereas the Charter of the United Nations includes the following proviso:
"Nothing contained in the present charter shall authorize the United Na-

tions to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present charter"; and

Whereas the charter would not have been approved by the American people nor ratified by the U.S. Senate without such a proviso;

LIMITATIONS OF WORLD COURT

Whereas the International Court of Justice has jurisdiction to deal only with matter between nations (art. 92, U.N. Charter; art. 1, Statute International Court of Justice); and

Whereas the Senate of the United States safeguarded the above limitation August 2, 1946, by approving, 51 to 12, the Connally amendment when the United States agreed to compulsory jurisdiction by the International Court of Justice;

ALIEN LAWS MAY CONFLICT WITH AMERICAN LAWS

Whereas an international court must of necessity include justices who represent various systems of law, many of which are alien to American concepts and practice and conflict with them, creating conditions adverse to our rights and liberties;

END OF THE REPUBLIC

Whereas the imposition of law advanced by any agency except the citizenry of our Nation would be totalitarianism;

BEGINNING OF THE END

Whereas a concession to the International Court of Justice to pass on the question of whether a matter is international or domestic can be the entering wedge by which the sovereignty of our Nation can be destroyed: Now, therefore, be it

Resolved, That the U.S. Senate be advised that the members of the California Chapter of Pro America are unalterably opposed to any action which would permit the International Court of Justice to determine whether an issue is of international or domestic status.

LELLIA A. BAXTER, *State President*.

Senator GREEN. Col. Oswald H. Saunders, U.S. Army, retired, representing National Sojourners, Inc.

STATEMENT OF COL. OSWALD H. SAUNDERS, U.S. ARMY, RETIRED, NATIONAL SOJOURNERS, INC.

Mr. SAUNDERS. Mr. Chairman, for the record, my name is Oswald H. Saunders, colonel, U.S. Army, retired, a practicing attorney in the District of Columbia. I appear here for National Sojourners, Inc., with headquarters at 1608 20th Street NW., Washington, D.C., and Washington Chapter 3 of that same fraternity.

The national president, Brig. Gen. Ralph R. Yeaman, cannot attend today, and I express regrets for him. Our organization appreciates the opportunity to present its views.

NATIONAL SOJOURNERS, INC.

National Sojourners is a Masonic organization of officers and warrant officers, active and retired, of the seven military services. The organization has a working membership of over 18,000, including present and former officers of the highest ranks of all of the services.

Members of the organization are Masons and are vitally interested in and dedicated to the preservation of our country and its way of life

in line with the ideals of our Founding Fathers. The organization is a worldwide one having over 250 chapters, meeting monthly, at places around the globe where service persons or retired officers are located.

CONCERN WITH REPEAL OF CONNALLY RESERVATION

Among the basic purposes of the organization, which purposes are restated at the monthly meetings of every chapter, are included the purpose of the "development of true patriotism and Americanism throughout the Nation," and the purpose of "opposition to any influence whatsoever calculated to weaken the national security."

In line with those tenets, members, chapters, and officers at the local and national levels are concerned with recent efforts in some quarters to repeal some of the basic safeguards to our national security.

As one of these matters our members view with alarm the efforts to repeal the Connally amendment as added to the Morse resolution of August 2, 1946, concerning adherence to the World Court.

RESOLUTION ADOPTED BY WASHINGTON CHAPTER 3

By the Connally amendment, our country's rights were safeguarded and preserved in our opinion in a proper manner and Washington Chapter 3 of National Sojourners recently adopted a resolution expressing its concern at the proposed repeal of this amendment. The resolution I present with this statement has the endorsement of the national officers of Sojourners who are empowered to approve such matters in the interim between national conventions. This will undoubtedly be brought up at the national convention to be held in June in Seattle, and it is requested that this resolution be included in the record, to show the stand of Washington Chapter No. 3 and of National Sojourners in opposition to the repeal of the Connally amendment.

We associate ourselves with the statements made here by various witnesses, particularly Dean Manion of today. I shall not, unless you desire it, read the resolution, which is attached to this, but it expresses further our reasons or the reasons of the Washington Chapter No. 3 for opposing this No. 94.

We appreciate the courtesy of your committee in according us this opportunity. We thank you.

(The resolution referred to follows:)

RESOLUTION RELATING TO THE WORLD COURT

(Adopted by Washington Chapter No. 3, National Sojourners, February 10, 1960)

Whereas the powers of the International Court of Justice, commonly referred to as the World Court, relate properly only to international disputes and not to matters essentially within the domestic jurisdiction of any nation; and

Whereas the ratification of the compulsory jurisdiction of the Court, by the U.S. Senate in 1946, was conditioned by the Connally amendment of six words, "as determined by the United States," which reserves to the United States the authority to determine which issues are within its own national jurisdiction as domestic matters; and

Whereas there is much agitation today to repeal or nullify the protective language of the Connally amendment, and resolutions have been introduced in both Houses of the Congress designed to secure such repeal or nullification; and

Whereas of the 15 judges of the World Court 2 at present are from Communist-controlled countries while only 1 is from the United States, and the judges of the Court may be expected in large part to hold doctrines alien to our national philosophy and way of life; and

Whereas only the British Commonwealth nations share our system of common law and many nations differ as to rights of minorities, presumption of guilt or innocence, and other important matters; and

Whereas the repeal or nullification of the Connally amendment would seriously impair the sovereignty of the United States and would vest in an essentially foreign tribunal a potential power over purely domestic matters relating to the basic rights of American citizens and the constitutional powers of our national and State governments, should such foreign court so determine; and

Whereas such impairment of American sovereignty could well serve as a stepping stone to the complete world government advocated by those groups endeavoring to propel our Nation into an alien control; Now, therefore, be it

Resolved, by Washington Chapter No. 3, National Sojourners, at its regular meeting, Wednesday evening, February 10, 1960, That this chapter of National Sojourners strongly opposes the adoption of Senate Resolution 94, introduced by Senator Humphrey, House Joint Resolution 558, introduced by Congressman McDowell, or any other measure designed to repeal or nullify the protective provision of the Connally amendment.

Senator GREEN. My thanks to you for coming today.

Colonel SAUNDERS. Thank you, sir.

Senator GREEN. That concludes the list of witnesses, several of whom did not appear as scheduled, but there will be the opportunity to file statements in the next 10 days if they are not unreasonable in length, after which the record will be completed.

Thank you all for your attendance at these hearings today.

(Whereupon, at 4:05 p.m. the hearing in the above-entitled matter was adjourned.)

APPENDIXES

APPENDIX A

1. CHAPTER XIV OF THE UNITED NATIONS CHARTER

CHAPTER XIV. THE INTERNATIONAL COURT OF JUSTICE

ARTICLE 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

ARTICLE 93

1. All Members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice.

2. A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council.

ARTICLE 94

1. Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

ARTICLE 95

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

ARTICLE 96

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities.

2. STATUTE OF THE INTERNATIONAL COURT OF JUSTICE

ARTICLE 1

The International Court of Justice established by the Charter of the United Nations as the principal judicial organ of the United Nations shall be constituted and shall function in accordance with the provisions of the present Statute.

CHAPTER I. ORGANIZATION OF THE COURT

ARTICLE 2

The Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are juris-consults of recognized competence in international law.

ARTICLE 3

1. The Court shall consist of fifteen members, no two of whom may be nationals of the same state.

2. A person who for the purposes of membership in the Court could be regarded as a national of more than one state shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.

ARTICLE 4.

1. The members of the Court shall be elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.

2. In the case of Members of the United Nations not represented in the Permanent Court of Arbitration, candidates shall be nominated by national groups appointed for this purpose by their governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

3. The conditions under which a state which is a party to the present Statute but is not a Member of the United Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly upon recommendation of the Security Council.

ARTICLE 5

1. At least three months before the date of the election, the Secretary-General of the United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the states which are parties to the present Statute, and to the members of the national groups appointed under Article 4, paragraph 2, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

2. No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case may the number of candidates nominated by a group be more than double the number of seats to be filled.

ARTICLE 6

Before making these nominations, each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

ARTICLE 7

1. The Secretary-General shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible.

2. The Secretary-General shall submit this list to the General Assembly and to the Security Council.

ARTICLE 8

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

ARTICLE 9

At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

ARTICLE 10

1. Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.

2. Any vote of the Security Council, whether for the election of judges or for the appointment of members of the conference envisaged in Article 12, shall be taken without any distinction between permanent and non-permanent members of the Security Council.

3. In the event of more than one national of the same state obtaining an absolute majority of the votes both of the General Assembly and of the Security Council, the eldest of these only shall be considered as elected.

ARTICLE 11

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

ARTICLE 12

1. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing by the vote of an absolute majority one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.

2. If the joint conference is unanimously agreed upon any person who fulfills the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Article 7.

3. If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from among those candidates who have obtained votes either in the General Assembly or in the Security Council.

4. In the event of an equality of votes among the judges, the eldest judge shall have a casting vote.

ARTICLE 13

1. The members of the Court shall be elected for nine years and may be re-elected; provided, however, that of the judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.

2. The judges whose terms are to expire at the end of the above-mentioned initial periods of 3 and 6 years shall be chosen by lot to be drawn by the Secretary-General immediately after the first election has been completed.

3. The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

4. In the case of the resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General. This last notification makes the place vacant.

ARTICLE 14

Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision: the Secretary-General shall, within 1 month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council.

ARTICLE 15

A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

ARTICLE 16

1. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature.

2. Any doubt on this point shall be settled by the decision of the Court.

ARTICLE 17

1. No member of the Court may act as agent, counsel, or advocate in any case.

2. No member may participate in the decision of any case in which he has previously taken part as agent, counsel, or advocate for one of the parties, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity.

3. Any doubt on this point shall be settled by the decision of the Court.

ARTICLE 18

1. No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.

2. Formal notification thereof shall be made to the Secretary-General by the Registrar.

3. This notification makes the place vacant.

ARTICLE 19

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

ARTICLE 20

Every member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously.

ARTICLE 21

1. The Court shall elect its President and Vice-President for 3 years; they may be re-elected.

2. The Court shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary.

ARTICLE 22

1. The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.

2. The President and the Registrar shall reside at the seat of the Court.

ARTICLE 23

1. The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

2. Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance between The Hague and the home of each judge.

3. Members of the Court shall be bound, unless they are on leave or prevented from attending by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

ARTICLE 24

1. If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

2. If the President considers that for some special reason one of the members of the Court should not sit in a particular case, he shall give him notice accordingly.

3. If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

ARTICLE 25

1. The full Court shall sit except when it is expressly provided otherwise in the present Statute.

2. Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of the Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

3. A quorum of nine judges shall suffice to constitute the Court.

ARTICLE 26

1. The Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labor cases and cases relating to transit and communications.

2. The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.

3. Cases shall be heard and determined by the chambers provided for in this Article if the parties so request.

ARTICLE 27

A judgment given by any of the chambers provided for in Articles 26 and 29 shall be considered as rendered by the Court.

ARTICLE 28

The chambers provided for in Article 26 and 29, may, with the consent of the parties, sit and exercise their functions elsewhere than at The Hague.

ARTICLE 29

With a view to the speedy despatch of business, the Court shall form annually a chamber composed of five judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.

ARTICLE 30

1. The Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure.

2. The Rules of the Court may provide for assessors to sit with the Court or with any of its chambers, without the right to vote.

ARTICLE 31

1. Judges of the nationality of each of the parties shall retain their right to sit in the case before the Court.

2. If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

3. If the Court includes upon the Bench no judge of the nationality of the parties, each of these parties may proceed to choose a judge as provided in paragraph 2 of this Article.

4. The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such, or if they are unable to be present, to the judges specially chosen by the parties.

5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.

6. Judges chosen as laid down in paragraphs 2, 3, and 4 of this Article shall fulfill the conditions required by Articles 2, 17 (paragraph 2), 20, and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

ARTICLE 32

1. Each member of the Court shall receive an annual salary.

2. The President shall receive a special annual allowance.

3. The Vice-President shall receive a special allowance for every day on which he acts as President.

4. The judges chosen under Article 31, other than members of the Court, shall receive compensation for each day on which they exercise their functions.

5. These salaries, allowances, and compensation shall be fixed by the General Assembly. They may not be decreased during the term of office.

6. The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

7. Regulations made by the General Assembly shall fix the conditions under which retirement pensions may be given to members of the Court and to the Registrar, and the condition under which members of the Court and the Registrar shall have their traveling expenses refunded.

8. The above salaries, allowances, and compensation shall be free of all taxation.

ARTICLE 33

The expenses of the Court shall be borne by the United Nations in such a manner as shall be decided by the General Assembly.

CHAPTER II. COMPETENCE OF THE COURT

ARTICLE 34

1. Only states may be parties in cases before the Court.

2. The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

3. Whenever the construction of the constituent instrument of a public international organization or of an international convention adopted thereunder is in question in a case before the Court, the Registrar shall so notify the public international organization concerned and shall communicate to it copies of all the written proceedings.

ARTICLE 35

1. The Court shall be open to the states parties to the present Statute.

2. The conditions under which the Court shall be open to other states shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

3. When a state which is not a Member of the United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such state is bearing a share of the expenses of the Court.

ARTICLE 36

1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

2. The states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

a. the interpretation of a treaty;

b. any question of international law;

c. the existence of any fact which, if established, would constitute a breach of an international obligation;

d. the nature or extent of the reparation to be made for the breach of an international obligation.

3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.

4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.

5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.

6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

ARTICLE 37

Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice.

ARTICLE 38

1. The Court, whose function is to decide in accordance with the international law such disputes as are submitted to it, shall apply:

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

b. international custom, as evidence of a general practice accepted as law;

c. the general principles of law recognized by civilized nations;

d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

CHAPTER III. PROCEDURE

ARTICLE 39

1. The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment shall be delivered in French. If the parties agree that the case shall be conducted in English, the judgment shall be delivered in English.

2. In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court shall be given in French and English. In this case the Court shall at the same time determine which of the two texts shall be considered as authoritative.

3. The Court shall, at the request of any party, authorize a language other than French or English to be used by that party.

ARTICLE 40

1. Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated.

2. The Registrar shall forthwith communicate the application to all concerned.

3. He shall also notify the Members of the United Nations through the Secretary-General, and also any other states entitled to appear before the Court.

ARTICLE 41

1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party.

2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.

ARTICLE 42

1. The parties shall be represented by agents.
2. They may have the assistance of counsel or advocates before the Court.
3. The agents, counsel, and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.

ARTICLE 43

1. The procedure shall consist of two parts: written and oral.
2. The written proceedings shall consist of the communication to the Court and to the parties of memorials, counter-memorials and, if necessary, replies; also all papers and documents in support.
3. These communications shall be made through the Registrar, in the order and within the time fixed by the Court.
4. A certified copy of every document produced by one party shall be communicated to the other party.
5. The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel, and advocates.

ARTICLE 44

1. For the service of all notices upon persons other than the agents, counsel, and advocates, the Court shall apply direct to the government of the state upon whose territory the notice has to be served.
2. The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

ARTICLE 45

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior Judge present shall preside.

ARTICLE 46

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted.

ARTICLE 47

1. Minutes shall be made at each hearing and signed by the Registrar and the President.
2. These minutes alone shall be authentic.

ARTICLE 48

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

ARTICLE 49

The Court may, even before the hearing begins, call upon the agents to produce any document or to supply any explanations. Formal note shall be taken of any refusal.

ARTICLE 50

The Court may, at any time, entrust any individual, body, bureau, commission, or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.

ARTICLE 51

During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

ARTICLE 52

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

ARTICLE 53

1. Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favor of its claim.

2. The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 86 and 87, but also that the claim is well founded in fact and law.

ARTICLE 54

1. When, subject to the control of the Court, the agents, counsel, and advocates have completed their presentation of the case, the President shall declare the hearing closed.

2. The Court shall withdraw to consider the judgment.

3. The deliberations of the Court shall take place in private and remain secret.

ARTICLE 55

1. All questions shall be decided by a majority of the judges present.

2. In the event of an equality of votes, the President or the judge who acts in his place shall have a casting vote.

ARTICLE 56

1. The judgment shall state the reasons on which it is based.

2. It shall contain the names of the judges who have taken part in the decision.

ARTICLE 57

If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion.

ARTICLE 58

The judgment shall be signed by the president and by the Registrar. It shall be read in open court, due notice having been given to the agents.

ARTICLE 59

The decision of the Court has no binding force except between the parties and in respect of that particular case.

ARTICLE 60

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

ARTICLE 61

1. An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

2. The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it has such a character as to lay the case open to revision, and declaring the application admissible on this ground.

3. The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

4. The application for revision must be made at latest within six months of the discovery of the new fact.

5. No application for revision may be made after the lapse of ten years from the date of the judgment.

ARTICLE 62

1. Should a state consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.

2. It shall be for the Court to decide upon this request.

ARTICLE 63

1. Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith.

2. Every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.

ARTICLE 64

Unless otherwise decided by the Court, each party shall bear its own costs.

CHAPTER IV. ADVISORY OPINIONS

ARTICLE 65

1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.

2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

ARTICLE 66

1. The Registrar shall forthwith give notice of the request for an advisory opinion to all states entitled to appear before the Court.

2. The Registrar shall also, by means of a special and direct communication, notify any state entitled to appear before the Court or international organization considered by the Court, or, should it not be sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

3. Should any such state entitled to appear before the Court have failed to receive the special communication referred to in paragraph 2 of this Article, such state may express a desire to submit a written statement or to be heard; and the Court will decide.

4. States and organizations having presented written or oral statements or both shall be permitted to comment on the statements made by other states or organizations in the form, to the extent, and within the time limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to states and organizations having submitted similar statements.

ARTICLE 67

The Court shall deliver its advisory opinions in open court, notice having been given to the Secretary-General and to the representatives of Members of the United Nations, of other states and of international organizations immediately concerned.

ARTICLE 68

In the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

CHAPTER V. AMENDMENT

ARTICLE 69

Amendments to the present Statute shall be effected by the same procedure as is provided by the Charter of the United Nations for amendments to that Charter, subject however to any provisions which the General Assembly upon recommendation of the Security Council may adopt concerning the participation of states which are parties to the present Statute but are not Members of the United Nations.

ARTICLE 70

The Court shall have power to propose such amendments to the present Statute as it may deem necessary, through written communications to the Secretary-General, for consideration in conformity with the provisions of Article 69.

3. JUDGES OF THE INTERNATIONAL COURT OF JUSTICE¹

(All terms expire February 5 of the year indicated)

The Judges now serving:

Green H. Hackworth, United States (1961).
 Enrique C. Armand-Ugon, Uruguay (1961).
 Abdul Hamid Badawi, UAR (1967).
 Jules Basdevant, France (1964).
 Roberto Cordova, Mexico (1964).
 Zafrulla Khan, Pakistan—Vice President (1961).
 Helge Klaestad, Norway—President (1961).
 Feodor Ivanovich Kojevnikov, U.S.S.R. (1961).
 Hersch Lauterpacht, United Kingdom (1964).
 V. K. Wellington Koo, China (1967).
 Lucio M. Moreno Quintana, Argentina (1964).
 Sir Percy Spender, Australia (1967).
 Jean Sprokopoulos, Greece (1967).
 Bohdan Winlarski, Poland (1967).
 Ricardo J. Alfaro, Panama (1964).

Former Judges were:

Jose Gustavo Guerrero, El Salvador (1964). Died October 25, 1958.
 John E. Read, Canada (1958).
 Milovan Zorilec, Yugoslavia (1958).
 Hsu Mo, China (1958).
 Alejandro Alvarez, Chile (1955).
 Levi Fernandes Carneiro, Brazil (1955).
 Sir Arnold D. McNair, United Kingdom (1955).
 Sir Benegal N. Rau, India (1961). Died November 30, 1953.
 Sergei A. Golunsky, U.S.S.R. (1961). Resigned July 18, 1953.
 Charles De Visscher, Belgium (1952).
 Sergei Borisovitch Krylov, U.S.S.R. (1952).
 José Philadelpho de Barros e Azevedo, Brazil (1955). Died May 7, 1951.
 Isidro Fabela Alfaro, Mexico (1952).

A. BIOGRAPHIC DATA CONCERNING PRESENT JUDGES OF THE INTERNATIONAL COURT OF JUSTICE

Hackworth, Green H., United States

Born at Prestonburg, Ky., United States of America, January 23, 1883.

Educated at Valparaiso University and at Georgetown and George Washington Universities; B.A. and LL.B. Doctor of laws of the Universities of Kentucky and honorary of Valparaiso. Member of the Bar of the District of Columbia and of the Supreme Court of the United States.

Legal adviser in the Department of State from August 1925 to March 1940.

Representative of the U.S. Government before the International Joint Commission, formed by United States and Canada (under the Boundary Water Treaty, 1909), 1923–46. Was sent by the Department of State on a special mission to Lausanne and Madrid, 1923. U.S. delegate to The Hague Conference on the Codification of International law, 1930; to the Eighth International Conference of American States, Lima, 1938; and to the Eighth Scientific Congress of American States, Washington, 1940. Adviser to the Secretary of State at the second meeting of Ministers of Foreign Affairs, Havana, 1940; U.S. delegate to the Inter-American Maritime Conference, Washington, 1940.

Accompanied the Secretary of State to the Moscow Conference, 1943. Was a member of the U.S. delegation at the Dumbarton Oaks Conference on International Organization, Washington, 1944; adviser to the U.S. delegation at the Conference of American States on Problems of War and Peace, Mexico

¹ Compiled by IO—Reference and Document Section, Department of State.

City, 1945; Chairman of the United Nations Committee of Jurists which met in Washington in April 1945 to prepare a draft of the Statute for the International Court of Justice; adviser to the U.S. delegation at the United Nations Conference on International Organization, San Francisco, April-June 1945; senior adviser of the U.S. delegation at the first part of the first session of the General Assembly of the United Nations, London, 1946.

He is a member of the American Society of International Law, of the American Bar Association, and of the Permanent Court of Arbitration.

He has contributed articles on international and constitutional law to various periodicals, and is the author of a "Digest of International Law," 8 volumes (1944).

Armand Ugón, Dr. Enrique C., Uruguay

Dr. Enrique C. Armand Ugón, a Uruguayan jurist with a long record of public service, was elected to the International Court of Justice in 1952 for a 9-year term. He was a member of the Uruguayan Supreme Court of Justice at the time, served as Associate Justice (1945-49) and as Chief Justice (1949-52).

Born in Montevideo, Uruguay, in 1893, Dr. Armand Ugón graduated from the National University with a bachelor of arts and sciences degree (1912) and a doctor of laws and social science degree (1918). He entered the legal profession in Uruguay as a prosecuting attorney, was appointed Judge of the Court of First Instance in 1920, and in 1938 was named Judge of the appellate court. Dr. Armand Ugón has attended several international conferences of a legal nature and in addition served as Uruguayan delegate to the 12th Ordinary Session of the League of Nations at Geneva (1931), chairman of the Uruguayan delegation to the third (1948) and fifth (1950) sessions of the United Nations General Assembly at Paris and New York respectively. He is the author of several legal works and has served on the National Commission for the Drafting of the Codes of Procedure and Commerce.

al-Badawi, 'Abd al-Hamid, UAR

'Abd al-Hamid al-Badawi has been a member of the International Court of Justice at The Hague since first elected to it in 1946. One of Egypt's most distinguished jurists, he is a student of both Roman and Islamic law, has a deep knowledge of international law, and has had a long and honorable career in the service of the Egyptian Government. In the course of that service he rose on two occasions to cabinet rank, as Minister of Finance from 1940 to 1942, and Minister of Foreign Affairs from March 1945 to February 1946. During this latter period he served as chairman of the Egyptian delegations to the San Francisco Conference and to the first part of the first session of the U.N. General Assembly in London.

Badawi was one of the most active members of the commission which drew up the old constitution of Egypt, adopted in April 1923. In 1936 he presented the Egyptian argument at the Montreux Conference.

'Abd al-Hamid al-Badawi was born at Mansourah, Egypt, on March 13, 1887. He was married in 1921, and has two sons and two daughters. After completing his early education at Alexandria he attended the Khedivial School of Law, Cairo, where he received the master of laws degree in 1908. He was awarded his doctorate of law, *summa cum laude*, from the Universities of Toulouse and Grenoble in 1912. Dr. al-Badawi is the recipient of many awards and decorations and has published many books and articles on international law in French and Arabic. He speaks English, French, and Arabic fluently.

Basdevant, Jules, France

Jules Basdevant has been a member of the International Court of Justice for several different periods, and at one time served as President of the Court. He was most recently elected to the Court in 1955 for a term ending in 1964. Basdevant has long been preeminent as an expert on technical matters pertaining to international law, and between the two world wars he was among those who endeavored to carry out the policy of collective security, working closely throughout that period with the French Ministry of Foreign Affairs.

Basdevant was born April 15, 1877, at Anost (Saône-et-Loire). After earning a law degree at the University of Paris, he taught law at the universities of Rennes and Grenoble. He served in World War I as an enlisted man, and afterward as a delegate and legal expert at the Versailles Peace Conference. He taught law at the University of Paris from 1924 to 1944, when he was dismissed for anti-German activities, returning to the university after the liberation. From 1924 to 1941 he combined his professorial duties with those of a legal adviser in the Ministry of Foreign Affairs. A member of the International Court of Justice from 1929 to 1939 and from 1946 to 1955, he served as the Court's Vice President from 1946 to 1948 and its President from 1949 to 1952. Basdevant has represented France in the capacity of a legal expert at numerous international conferences, including the League of Nations (1930, 1937), the U.N. Conference on International Organization (San Francisco, 1945), and the United Nations General Assembly (4th sess., 1949). He has been a member of the Permanent Court of Arbitration at The Hague for many years.

Basdevant is married to the former Mlle. Renée Malharmé. Two of his sons were killed during World War II, and one son, Pierre, is a career diplomat now assigned to the French Foreign Office. Basdevant has two daughters, one of whom is married to Paul Bastid, well-known journalist, professor, and former deputy. Basdevant is an officer of the Legion of Honor and possesses many foreign decorations.

Cordova, Roberto, Mexico

Roberto Cordova was installed as a judge of the International Court of Justice at The Hague on February 9, 1955, for a 9-year term. He has spent most of his career in the Mexican Foreign Office. In 1947, he was given the personal rank of Ambassador in the Mexican Foreign Service.

Born on October 5, 1899, in Mexico City, Cordova was educated at the Law School of the University of Mexico and attended the University of Texas from 1920 to 1921 on a scholarship. He entered the Foreign Office in 1927 and later served as legal counselor of the Embassy in Washington from 1938 to 1943 and as Ambassador to Costa Rica from 1943 to 1945. Cordova has participated in numerous international conferences including the Eighth International Conference of American States at Lima in 1938; the Inter-American Conference on Problems of War and Peace (Chapultepec Conference) at Mexico City in 1945; and meetings of the Ministers of Foreign Affairs of the American Republics at Rio de Janeiro in 1947 and at Washington in 1951. In addition to serving as a delegate at several International Labor Organization (ILO) conferences, he was a member of the delegation to the U.N. Preparatory Commission in London in 1945 and attended sessions of the U.N. General Assembly in 1946, 1949, and 1951.

A former athlete and Mexican Olympic champion in the 100-meter dash, Cordova is married and has two sons and a daughter. He speaks English.

Zafrulla Khan, Chaudhri Mohammad, Pakistan

Chaudhri Mohammad Zafrulla Khan was elected to the International Court of Justice on October 7, 1954 (following nomination by the United States), to serve until February 5, 1961. Elected Vice President of the Court in 1958, jurist Zafrulla Khan is learned in the legal systems of the Western world as well as the religious and philosophical systems of the East. He was Minister of External Affairs and Commonwealth Relations from 1947 to 1954. Before assuming his present position he led every Pakistan delegation to the U.N. General Assembly.

Zafrulla Khan was born February 6, 1893, in Sialkot, Punjab. After graduation from an American mission high school and from Government College in Lahore with a bachelor of arts degree, he studied at King's College of the University of London, receiving a bachelor of laws degree. He was admitted to the bar from Lincoln's Inn, London, in 1914.

Zafrulla Khan lectured at the University Law College, Lahore, and from 1916 to 1935 also appeared in the Patna and Madras High Courts and before the Judicial Committee of the Privy Council, London. He was a member of the Punjab Legislative Assembly from 1927 to 1935 and a delegate to the Indian Round Table Conference in 1930, 1931, and 1932. Successively he was Minister

of Education, Health, and Lands in 1932; a delegate to the Joint Select Committee of both Houses of Parliament on Indian Constitutional Reforms in London in 1933; Minister of Railways and Commerce, 1935-38; Minister of Law and War Supply, 1939-41; leader of the Indian delegation to the Assembly of the League of Nations, 1939; Judge, Supreme Court of India, 1941-47; Minister of India to China (Chungking) on deputation from the Supreme Court, 1942; constitutional adviser to the Ruler of Bhopal, 1947; and head of the Pakistan delegation to the U.N. Security Council on the Question of Kashmir, 1948 and in 1952-53.

Zafrulla Khan was knighted by the British Government in 1937 and received an honorary doctor of laws degree from Cambridge University. He is an Honorary Fellow of King's College, London, and an Honorary Benchler of Lincoln's Inn.

Klaestad, Helge (Dr.), President of the International Court of Justice, Norway

Dr. Helge Klaestad, a jurist with much experience in international law, became President of the International Court of Justice in 1958. He has served with the Permanent Court of Arbitration since 1929 and at the International Court of Justice since 1946.

Born December 6, 1885, Dr. Klaestad studied in England, France, Italy (1915-18), and at the University of Oslo, where he received his LL.D. degree in 1921. In 1924 he married Laila Richter, who was born in Chiengo of Norwegian parents.

Dr. Klaestad, who speaks English, French, German, and Italian, was legal adviser to the Inter-Allied Reparations Commission in Vienna (1920-21). As president of the Anglo-German Mixed Arbitral Tribunal (1925-31), he served as arbitrator between Germany and the British Empire, Austria and the British Empire, and Hungary and the British Empire in certain disputes under the peace treaties. In 1931 Dr. Klaestad was Joint Commissioner of the Permanent Commission of Conciliation between the United States and Italy. He later served as a member of various other conciliation commissions.

Dr. Klaestad has also held positions of responsibility in his native Norway. He has served as Chief of Division in the Ministry of Justice (1918-20); in the Ministry of Foreign Affairs (1921-25); and as a Justice of the Supreme Court of Norway (1931-46). In addition, Dr. Klaestad has published a number of judicial treatises and books. He is a member of the Norwegian Academy of Sciences and Letters, and an Associate of the Institute of International Law.

Kozhevnikov, Fedor Ivanovich, U.S.S.R.

Fedor Ivanovich Kozhevnikov, a ranking Soviet expert on international jurisprudence, has been the Soviet member of the International Court of Justice since November 1953. Just prior to this appointment he served briefly as a member of the United Nations International Law Commission, having been elected in 1952 to serve out the remaining year of the resigning Soviet member's 5-year term. During the course of his career, Kozhevnikov acquired a familiarity with all aspects of the Soviet legal profession, including the academic, judicial, editorial, and propagandistic.

Kozhevnikov was born on June 15, 1903. A doctor of juridical sciences, he was graduated from Moscow State University in 1927 and has been a professor of law there for many years. In March 1951 Kozhevnikov was confirmed as a People's Assessor of the U.S.S.R. Supreme Court; he apparently served in this judicial post for the full 6-year term.

In 1947 Kozhevnikov joined the newly established Legal Section of the All-Union Society for Cultural Relations With Foreign Countries (VOKS); he later became chairman of the section, continuing to serve in the same position when VOKS was reorganized into the Union of Soviet Societies for Friendship and Cultural Relations With Foreign Countries, until early in 1959.

Kozhevnikov has been active for a long time on behalf of the Soviet international "peace" campaign. During the propaganda campaign against alleged U.S. use of bacteriological warfare in Korea, he appeared in the Soviet press in the capacity of a legal expert, condemning the United States for violating international law and clothing the Soviet charges in legal terminology. He has been a member of the Council of the International Association of Democratic Lawyers (IADL), attending its meetings in Paris (April 1949) and Warsaw (November 1950), as well as the Fifth Congress of the IADL in Berlin (September 1951).

As a member of Soviet Peace Committee delegations, he attended the Congress for the Peaceful Solution of the German Question at Prague (October 1953), and the Second World Conference Against Atomic and Hydrogen Bombs in Japan (August 1950).

Kozhevnikov's publications include "The Russian State and International Law" (1947), "A Textbook of Public International Law" (1947), "The Soviet State and International Law" (1948), "International Treaties" (a chapter in International Law (1951), a volume edited by Ye. A. Korovin), and numerous papers published in Soviet periodicals. He served as chief editor of "Sovetskoye gosudarstvo i pravo" (Soviet State and Law), journal of the Institute of Law of the U.S.S.R. Academy of Sciences, from 1950 to 1953 and as a member of the editorial board of that publication both before and after that period.

Lauterpacht, Sir Hersch, United Kingdom

Sir Hersch Lauterpacht was appointed a judge of the International Court of Justice in November 1954, and was installed in office on February 9, 1955. He is also a member of the Permanent Court of Arbitration. From 1938 to 1955 Lauterpacht was Whewell professor of international law at the University of Cambridge; he was a professor at The Hague Academy of International Law in 1930, 1934, 1937, and 1947. He was co-opted to the U.N. International Law Commission in 1951, remaining with this body until 1955. Lauterpacht also has served as President of the Permanent French-Swedish Conciliation Commission and of the Permanent Norwegian-Portuguese Conciliation Commission. He resigned from the Conciliation Commission of the Permanent Court of Arbitration following his election to the International Court of Justice. Lauterpacht is the author of many outstanding publications in the field of international law including "The Function of Law in the International Community" (1933); "The Development of International Law by the Permanent Court of International Justice" (1934); "An International Bill of the Rights of Man" (1945); "Recognition in International Law" (1947); "International Law and Human Rights" (1950); and "Development of International Law of the International Court" (1958). He is a former editor of "Oppenheim's International Law" (1935-55); "The British Year Book of International Law" (1944-55); and "Annual Digest and Reports of Public International Law Cases." He was joint editor of the "Cambridge Series of International and Comparative Law."

Born on August 10, 1897, Hersch Lauterpacht was educated at the University of Vienna and at the University of London. In 1927 he was appointed an assistant lecturer in the London School of Economics, and in 1931 became Reader in Public International Law at the University of London. He remained in the latter post until he went to Cambridge in 1935. He was called to the bar at Gray's Inn (London) and was appointed a King's Counsel (now Queen's Counsel) in 1940. In 1945-46 Lauterpacht was a member of the British War Crimes Executive. He was a Carnegie endowment visiting professor in the United States in October-December 1940, and later lectured at Wellesley College (October-December 1941) and at the University of Colorado (June-July 1948). For 3 months in 1948 he served as an adviser to the United Nations Secretariat on the codification of international law.

Lauterpacht married Rachel Steinberg in 1928. His only child, Eli Lauterpacht, is now a lecturer in international law at Cambridge University. Sir Hersch was knighted in 1956.

Koo, V. K. Wellington (Ku Wei-chün), China

V. K. Wellington Koo filled some of the highest positions in the Chinese diplomatic service before his election in 1957 to a judgeship in the International Court of Justice. He was Ambassador to Great Britain from 1941 to 1946 and Ambassador to the United States from 1946 to 1956. He was active in the League of Nations during his early career and was chairman of the Chinese delegation to the first three sessions of the United Nations General Assembly. Several times he served as a member of the International Court of Arbitration.

Koo was born in Shanghai in 1888. He received his advanced education in the United States, where he obtained B.A. (1908), M.A. (1909), and Ph. D. (1912) degrees from Columbia University. He returned to China in 1912 to assume the posts of Secretary of the Cabinet and Secretary to the President. In July 1915 he was appointed Minister to Mexico and 8 months later became Minister to the United States, the youngest diplomat of that rank ever to come to this country.

In 1920 Koo became Minister to Great Britain. The following year he served as president of the 14th session of the Council of the League of Nations and was appointed plenipotentiary to the Washington Conference. During the next few years, Koo held a variety of offices in Peking: as Minister of Foreign Affairs (1922-24), Acting Prime Minister (1924), Minister of Finance (1926), and Prime Minister (1927).

A change of Chinese administration left Koo in virtual retirement from 1928 until 1932. During the latter year he was appointed Chinese Assessor of the League of Nations Commission of Inquiry on the Manchurian Crisis. Koo served as Minister to France from 1932 to 1935 and as Ambassador to that country from 1935 to 1941. During these periods he was Chinese representative on the Council of the League of Nations and chief delegate to meetings of the League Assembly. Ambassadorial assignments to London and Washington occupied Koo until his election to the International Court of Justice.

Moreno Quintana, Lucio Manuel, Argentina

Dr. Lucio M. Moreno Quintana was elected to the International Court of Justice in 1955 for a term of 9 years. He had, since 1945, been serving as a member of the Permanent Court of International Arbitration at The Hague and three times has held the post of Under Secretary of Foreign Affairs in the Argentine Foreign Ministry.

Moreno was born in Paris, France on August 31, 1898, the son of an Argentine diplomat. His maternal grandfather was Manuel Quintana, President of Argentina (1904-06). Moreno received most of his early education in Europe but graduated with a law degree from the University of Buenos Aires in 1919 and the following year took his doctorate in law from the same institution. He served as secretary of the Argentine Embassy in Lima (1921) and Under Secretary of Foreign Affairs (1922-23) before beginning his teaching career. As a professor of American history, political economics, international law and commercial law, Moreno taught at various national schools, and in 1935 became director of the Faculty of Political Economy at the University of Buenos Aires. He served again as Under Secretary for Foreign Affairs during 1940-42 and 1945-46. The author of several works of a legal and political economic nature, Moreno has also held positions in the Ministry of Finance and acted as legal advisor during 1938-44 to the Transport Central Commission of Buenos Aires. He was chairman of the Argentine delegation to the first meeting of the U.N. General Assembly at London in 1945-46.

Moreno is married to the former Mercedes Maschwitz and has two sons. He speaks French and some English.

Spender, Sir Percy (Claude), Australia

Sir Percy Spender, Australian Ambassador in Washington for 7 years, was elected in October 1957 to the International Court of Justice for a 9-year term which will terminate in 1967. A lawyer by profession, Spender pursued a political career and held several government portfolios, including External Affairs, before his appointment as Ambassador in 1951. For many years Spender was a prominent spokesman for Australian interests in international councils and a strong advocate of close Australian economic and military ties with the United States and with southeast Asian countries. He was the driving force behind the creation of the Colombo plan and played a leading part in the conception and negotiation of ANZUS. Spender was chairman of the Australian delegation to the Japanese Peace Conference in San Francisco in 1951, and served as a Governor of the IBRD and the International Monetary Fund from 1951 to 1953. He led the Australian delegation to many sessions of the U.N. General Assembly.

Percy Claude Spender was born October 5, 1897, in Sydney. He entered the public service as a law clerk and studied economics and law at night at the University of Sydney, where he was an outstanding student. Following his graduation in 1918 he was assigned briefly to the Army Legal Corps. Awarded an LL.B. degree by the University in 1923, he was called to the bar the same year and established a private practice in common law and equity. He became a King's Counsel in 1935. He was elected to Parliament as an independent in 1937 but later joined the United Australia Party. In 1940 he entered the Cabinet as Treasurer and Minister for the Army and became a member of the Advisory War Council. Spender resigned from the executive of his party in 1943 as a result of policy disagreement, and when he remained a member of the bipartisan

Advisory War Council despite his party's decision to withdraw from that body, he was expelled from the party. When the Liberal Party was formed in 1944, Spender was admitted to it. He became Minister for External Affairs after the Liberal-Country coalition victory in 1949.

Spender was knighted in 1952. On the occasion of her visit to the United States in 1957, Queen Elizabeth conferred on Sir Percy the honor of Knight Commander of the Royal Victorian Order (K.C.V.O.). Spender married Jean Henderson in 1925 and they have two sons, both of whom attended Yale University. That institution awarded Sir Percy an honorary LL.D. degree in 1957, and he holds similar degrees from American International College at Springfield, Mass., and from Trinity College at Hartford, Conn. His published works include "Company Law and Practice," 1930, and "Foreign Policy—The Next Phase," 1944. Lady Spender is a writer of fiction.

Spiropoulos, Jean, Greece

Jean Spiropoulos, a distinguished professor of international law now serving as judge at the International Court of Justice, has represented his country at many international conferences and in many international organizations. An accomplished linguist and prolific writer, he has published legal treatises in Greek, French, and German.

Spiropoulos was born at Nauplia, Greece, on October 16, 1896, but has spent most of his life in Western European countries. He studied law at the University of Zurich from 1916 to 1921 and received the doctorate of law at the University of Leipzig in 1922. From 1922 to 1927 he was a professor at the University of Kiel. In 1928 he returned to Greece as professor of international law at the University of Thessaloniki, and in 1939 went from Thessaloniki to the University of Athens.

Spiropoulos represented Greece at the Balkan Conferences, 1920-33; the San Francisco Conference on International Organization, 1945; several sessions of the U.N. General Assembly; and became the Greek member of the Permanent Court of Arbitration at The Hague. Since 1954 he has been a legal adviser at the Ministry of Foreign Affairs in Athens, and in 1958 was elected to the International Court of Justice.

Winiarski, Bohdan Stefan, Poland

Winiarski, a jurist and economist, has been a member of the International Court of Justice at The Hague since 1940. His present term expires in 1967. After studying law at Warsaw, Kraków, Paris, and Heidelberg, Winiarski was appointed professor of public international law at the University of Poznań in 1922. He was dean of the law faculty there from 1936 to 1939. Winiarski began attending international conferences in 1917. Active in the work of the League of Nations between the wars, he was a member and vice president of its Permanent Commission on Communications and Transit from 1921 to 1927, president of its Committee on River Law after 1925, and a delegate to the International Order Commission from 1923 to 1930. The professor is author of several works on Polish and French constitutional and international law.

Bohdan Stefan Winiarski was born April 27, 1884, in Bohdanowo, Poland. Besides teaching and serving at international conferences during the 1920's and 1930's, he was a deputy to the Polish Sejm (legislature) from 1928 to 1935 and was a member of the opposition to Pilsudski. Although arrested by the Germans in 1939, Winiarski succeeded in leaving Poland in 1940. He served as president of the Bank of Poland, in London during 1941-46. From 1944 to 1945 he was a member of the Interallied Committee on the Future of the Permanent Court of International Justice. Winiarski served as a substitute member (1956-57), then as a member (1957-58), of the International Court's Chamber for Summary Procedure.

Alfaro, Ricardo J., Panama

A jurist-statesman and former President of the Republic, Alfaro was elected to the International Court of Justice in the fall of 1959. He filled the vacancy in that body created by the death in October 1958 of Judge José Gustavo Guerrero of El Salvador. The 78-year-old Alfaro's term of office will expire on February 5, 1964, the date on which Guerrero's tenure would have expired.

Born on August 20, 1882, in Panama City, Alfaro holds an LL.D. degree from the National University of Panama and also received an honorary doctorate

from the University of Southern California. During the past 55 years, Alfaro has held the following posts: Under Secretary of Foreign Affairs (1905-08); legal counselor of the Panamanian Legation at Washington (1912); Minister of Interior and Justice (1918-22); Panamanian Minister to the United States (1922-30 and again from 1933-36); President of Panama (1931-32); Minister of Foreign Affairs (1945-47); member of the U.N.'s International Law Commission (1948) and Chairman of the Commission (1952-53); advisor to the Panamanian Government in negotiations with the United States on the Panama Canal (1953); member and president of Panama's long-range planning body known as the National Council for Foreign Affairs (1950-57); member of the U.N.'s International Law Commission (1958).

Alfaro has been the author of many published works on legal affairs, most of which appeared during the years 1912-53. His most definitive work in this field is believed to be "A Half Century of Relations Between Panama and the United States" (volume entitled "Panama—50 Years as a Republic"), published in 1953. Among the numerous professional associations to which Alfaro has belonged, are the following: secretary-general of the American Institute of International Law; honorary member of the American Bar Association; member of the American Society of International Law, at Washington; member of the advisory councils for the American Academy of Political and Social Sciences and the Society of Consular Law, at Philadelphia and New York, respectively.

Alfaro, who speaks fluent English and French, will celebrate his 55th wedding anniversary in October of this year. He is the father of three sons and two daughters, all of whom grew up in Washington, D.C. One of his sons (Victor) is a naturalized citizen of the United States and is married to a U.S. citizen; both daughters (Amelita and Yolanda) are married to native-born U.S. citizens residing in Washington.

B. BIOGRAPHIC DATA CONCERNING FORMER JUDGES OF THE INTERNATIONAL COURT OF JUSTICE

Guerrero, José Gustavo (deceased), El Salvador

One of the 15 judges of the International Court of Justice from January 1931 until his death in October 1958, Guerrero's long life of 82 years also included positions of responsibility in his country's diplomatic service. His last term of office as an International Court member would have extended until 1964.

Born on June 26, 1876, Guerrero received his LL.D. from the University of Guatemala in 1898 and embarked upon his career in the year 1902 with his appointment as Salvadoran Consul at Bordeaux and later Genoa. Following are the principal positions subsequently held by him: Secretary of Legation, Washington (1907-08); Chargé d'Affaires, Rome (1909-12); Minister to Italy, Spain, and France (1912-23); Minister of Foreign Affairs (1927-28); Minister to the Vatican and to France (1928-31). Guerrero began his lengthy association with the International Court of Justice in 1931 and served for the next 14 years as Vice President and then President of that body. In 1946 he was again elected to the Court (for a 9-year term) and in 1955 reelected for the next 9-year period.

Guerrero, a Hispano-Indian, died on October 26, 1958, at Nice, France; it is not known whether his wife, the former Adrienne Primi, whom he married in 1911, survives.

Read, John Erskine, Canada

John Erskine Read was appointed a judge of the International Court of Justice in 1946, and retired at the end of his term in 1958. An expert on constitutional and international law, Read served as legal adviser to the Canadian Department of External Affairs from 1929 to 1946. During this period he was a Canadian representative to a number of Commonwealth and international conferences, including the Conference on Operation of Dominion Legislation (1929); Imperial Conference (1930); Imperial Economic Conference (1932); Imperial Conference (1937); United Nations Committee of Jurists (1945); and the first session of the United Nations General Assembly (1946). From 1924 to 1929 he represented New Zealand and from 1933 to 1945 Canada at the Conference of Commissioners on Uniformity of Legislation. Read also acted as Canadian Government agent in several cases involving arbitration and served as Government counsel in references to the International Joint Commission.

The son of a doctor, John Read was born on July 5, 1888, in Halifax, Nova Scotia. He attended Dalhousie University (Nova Scotia), Columbia University,

and University College, Oxford (Rhodes Scholar), where he obtained a B.C.L. degree. He was admitted to the bar of Nova Scotia in 1913 and engaged in general practice until 1920. He was created a King's Counsel (now Queen's Counsel) in 1925. During World War I he served overseas with the Canadian Field Artillery; he was wounded and invalided out with the rank of major. In 1920 he was appointed a professor at the Dalhousie Law School and became dean there in 1924.

Read holds honorary LL.D. degrees from Dalhousie and McMaster Universities, and an honorary D.C.L. degree from Oxford. His publications include *Cases on Canadian Constitutional Law* and various articles in law journals. Read married Diana Willes Chitty in 1915; they have two surviving sons (one son was killed in World War II). He is a member of the Baptist Church.

Zoričić, Dr. Milovan, Yugoslavia

Dr. Zoričić, a Croatian lawyer, served as a judge of the International Court of Justice at The Hague from 1946 to 1958. His judicial career, which began over 50 years ago, includes service with the League of Nations in the 1930's and a term on the Supreme Court of Justice of Zagreb after World War II. Currently he is a corresponding member of the Yugoslav Academy of Arts and Sciences in Zagreb and a member of the Council of the (Yugoslav) Institute for Comparative Law.

Zoričić was born on May 31, 1884, in Zagreb. After receiving a doctorate in law from the University of Zagreb, he studied and traveled in various European countries for 2 years. In 1910 he began working for the attorney general's office at Zagreb, and at the close of World War II he was attached to the Provincial government in Zagreb, where he took part in the organization of the new Yugoslav administration. Later he headed the political department of the administration for Croatia and Slovenia.

Zoričić's work with international organizations began in 1932, when the League of Nations appointed him a member of the governing commission of the Saar territory. Originally in charge of justice, education, and worship, he took over the duties of deputy president of the Saar territory in the year of the plebiscite. In April 1935, he was named a member of the Permanent Court of Arbitration at The Hague. During World War II, after the German occupation of Yugoslavia in 1941, Zoričić was dismissed from office; he was held under arrest in September-October 1944.

After the war Zoričić was elected a judge of the Supreme Court of Justice of Zagreb. As a member of the Yugoslav delegation, he attended the first part of the first session of the United Nations General Assembly, held in London in 1946; there he represented his country on Committee VI (legal). With the creation of the International Court of Justice in February 1946, Zoričić was elected to a 3-year term as judge, and in October 1948 he was elected to a second term, which expired in February 1958.

Hsü Mo, China

Hsü Mo died on June 28, 1956, after serving for 11 years as a Judge at the International Court of Justice. He was elected to the judgeship at The Hague in 1945 following an earlier career in law and the diplomatic service.

At the time of his death Hsü was 63 years old. He was born on October 22, 1893, at Soochow, China. After being graduated from Pelyang University in Tientsin, where he received an LL.B. degree in 1917, he continued his studies in the United States. Hsü earned an M.A. degree from George Washington University in 1921.

Hsü returned to China to become a professor of law and political science at Nankai University in Tientsin, where he was employed until 1926. He served as a judge of the Shanghai special district court in 1927 and later as president of the Chinkiang district court.

In 1928 Hsü joined the Chinese Ministry of Foreign Affairs as a counselor. Before 1931, he also served in the Ministry as Chief of the International Affairs Department, the European-American Department, and the Asiatic Department. He was a Vice Minister of Foreign Affairs from 1932 to 1941. Concurrently during the latter period, Hsü was dean of the School of Diplomacy of Central Political Institute in Nanking and Chungking.

Hsü was given a diplomatic assignment in 1941 when he was appointed Minister to Australia. In 1945 and 1946, before joining the International Court of Justice, he served as Ambassador to Turkey.

Alvarez Joffre, Alejandro, Chile

Alejandro Alvarez, an eminent jurist and expert on international law, served as a member of the International Court of Justice at The Hague from 1946 to 1955. Born on February 9, 1868, in Santiago, Chile, he received a law degree from the University of Chile in 1892 where he later held a professorship in civil law. Alvarez also graduated from the University of Paris in 1898 with a doctorate of laws. He represented his country at numerous international conferences during the years from 1901 to 1935 and was a delegate at the League of Nations. He was also a member of the Permanent Court of Arbitration at The Hague. Alvarez has written several works in the field of international law including a major study of American international law which was published in 1909.

Carneiro, Levi Fernandes, Brazil

Dr. Levi Fernandes Carneiro, one of Brazil's most distinguished authorities on international law, served as a member of the International Court of Justice from 1952 to 1955. He is also an expert on constitutional law, having been the principal author of the Brazilian Constitution in 1934.

Born at Niteroi, State of Rio de Janeiro, on August 8, 1882, Dr. Carneiro graduated from the Rio de Janeiro Law School in 1903. He has since received several honorary degrees including a doctorate in law from the University of La Plata, Argentina. Dr. Carneiro has been president of the Brazilian Bar Association (1931-33 and 1938-40) and a delegate to numerous international conferences on legal matters, history, and child welfare. In addition he has represented his country at several conferences of the United Nations Economic and Social Council. Some of the more important positions he has held are Solicitor General of Brazil (1930-32), delegate to the Constituent Assembly (1933-34), Federal deputy (1935-37), professor of Law School at University of Rio de Janeiro (1938-40), member of the Permanent Court of Arbitration at The Hague (1944-52), and legal adviser to the Ministry of Foreign Affairs (1947-51). Long active in the furthering of international cultural relations, Dr. Carneiro is a past president of the Brazil-United States Cultural Institute and of the Brazil-Uruguay Cultural Institute.

Dr. Carneiro has published widely in his field. Among the associations and societies of which he is a member are the Brazilian Education Association, Brazilian Academy of Letters, Brazilian Historical and Geographical Institute; Fluminense Academy of Letters; Brazilian Society of International Law, Society of Comparative Law of Paris, Lisbon Academy of Letters, Language Academy of Colombia, and Academy of Political Science of New York. Dr. Carneiro is married and the father of seven children. In addition to his native Portuguese, he speaks good French and fair English.

McNair, Lord, United Kingdom

Lord McNair (formerly Sir Arnold McNair) was a judge of the International Court of Justice from its inception in 1946 until his term expired in February 1955. He also served as President of the Court during 1952-53. Lord McNair has been a British member of the Permanent Court of Arbitration at The Hague since 1945. Since leaving the Court, Lord McNair has acted as chairman of a committee on freedom of employers' and workers' organizations which prepared a report for the International Labor Organization (ILO), and as provisional president of the European Court of Human Rights in Strasbourg. In March 1958, he was elected president of the Swiss-German Commission of Conciliation, and the following year became chairman of the International Law Association.

Born in London on March 4, 1885, Arnold McNair attended Aldenham School and Gonville and Caius College, Cambridge. He was called to the bar at Gray's Inn (London), and created a King's Counsel (now Queen's Counsel) in 1945. In 1913 McNair was made a fellow and law lecturer at Gonville and Caius College, and in 1925 received an LL.D. degree from Cambridge. From 1926 to 1927 McNair was reader in international law at the University of London. His Tagore lectures at the University of Calcutta were published in 1932 as "The Law of the Air." McNair held the Whewell chair of international law at Cambridge from 1935 to 1937, when he was succeeded by Sir Hersch Lauterpacht. He was a professor at the Hague Academy of International Law in 1928, 1933, and 1937. From 1937 to 1945 he served as vice chancellor of the University of Liverpool, and in 1945 he was appointed professor of comparative law at Cambridge, a post he held for about 1 year.

In British public service, Lord McNair held several appointments between 1917 and 1924 on commissions dealing with the coal industry. He was chairman of the Committee on the Supply and Training of Teachers and Youth Leaders during 1942-45. In 1945 he also served as chairman of the Jewish Education Commission in Palestine. In international affairs he was the British substitute member of the third session in 1926 of the committee of experts of the League of Nations Codification Committee, and was a member of the ILO's committee of experts on the application of labor conventions. Lord McNair's published works include "Legal Effects of War" (1920, third edition, 1948); "Law of the Air" (1932, second edition, 1953); (with Professor Buckland) "Roman Law and Common Law" (1936, second edition, 1952); "Law of Treaties" (1938); "Dr. Johnson and the Law" (1949); and "International Law Opinions" (1956).

Lord McNair holds honorary LL.D. degrees from the Universities of Glasgow, Liverpool, Birmingham, and Salonika; an honorary D.C.L. degree from Oxford; and an honorary D. Litt. degree from Cambridge. He was knighted in 1943, and created Baron McNair of Gleniffer in 1955. During 1948-50 he was President of l'Institut de Droit International. Lord McNair married Marjorie Bailhache in 1912; they have one son and three daughters.

Rau, Sir Benegal Narsing, India

Born on February 26, 1887, in the District of South Kanara, Sir Benegal Narsing Rau graduated from the University of Madras and took a first in mathematics at Cambridge University. He was offered but refused a Fellowship of Trinity College, Cambridge. Entering the Indian Civil Service in 1910, he was Secretary to the Assam Legislative Department and Assam Legislative Council from 1925 to 1933. He joined the legislative department of the Government of India and advised the Government on legal matters from 1934 to 1935. From 1935 to 1937 he revised the entire Indian statute book. He was reforms commissioner in 1938 and a judge of the Calcutta high court from 1939 to 1944.

Rau was also Chairman of the Commission for Adjudication of the Inter-State Dispute regarding the Indus River in 1941-42 and of the Committee for Codification of Hindu Law in 1940-41 and 1943-46. The draft code embodied in the report of this Committee has been described in the Journal of Comparative Legislation as a historic landmark. Rau was Prime Minister of Kashmir in 1945 and Constitutional Adviser to the Constituent Assembly of India in 1946. He also advised the Constituent Assembly of Burma on framing the Constitution of Burma in 1947.

In June 1949 Rau became the Permanent Representative of India to the United Nations. He led the delegations of India to the fourth and fifth sessions of the General Assembly and was vice chairman of the International Law Commission in April 1949. From December 6, 1951, until his death in 1953 he was one of the judges of the International Court of Justice at The Hague.

Rau participated in the Conference of the International Bar Association at The Hague in August 1948. In the same year he was elected a member of the International Institute of Political and Constitutional History, Sorbonne, Paris, and received the degree of doctor of civil law honoris causa from the University of Delhi in recognition of his profound learning and his valuable contribution to Indian jurisprudence.

Among his publications are "Constitutional Precedents"—three series, articles on "Human Rights in India" written for the U.N. "Yearbook on Human Rights," "Report of the Indus Commission," and the "Hindu Law Committee Report," volumes 1 and 2.

Sir Benegal N. Rau died in Zurich, Switzerland on November 30, 1953.

Golunsky, Sergey Aleksandrovich, U.S.S.R.

Sergey Aleksandrovich Golunsky, doctor of juridical sciences and professor at Moscow State University, is one of the foremost Soviet legal experts. He was one of the leading figures in the U.S.S.R. Ministry of Foreign Affairs from 1945 to 1951, serving as a member of the Collegium and Chief of the Legal (later Treaty-Legal) Division, with the diplomatic rank of Minister First Class after December 1948. In December 1951 he was elected to the International Court of Justice for a 9-year term, but illness prevented him from filling the post and forced him to resign in July 1953. Experienced in foreign relations and thoroughly familiar with the Soviet approach to both domestic and international law, he continues to be active in the academic field and as editor of a law journal.

Golunskiy was born July 4, 1895, in Moscow. He was graduated by the juridical faculty of Moscow University in 1917 and became a *kandidat* (a postgraduate student preparing for a doctorate degree) in 1919. He worked in the office of the U.S.S.R. State Prosecutor from 1923 to 1930. Elected corresponding member of the U.S.S.R. Academy of Sciences in 1930 in the field of law, he performed "leading scientific work" at the Academy's Institute of Law (where he reportedly was dean) and at the Academy of Military Law from then until 1943. He has been the Director of the Scientific-Research Institute of Criminology since 1956. A vice president of the "U.S.S.R.-Great Britain Society" since it was established in early 1958, he is a member of the legal section of the Union of Soviet Societies for Friendship and Cultural Relations with Foreign Countries, and was active in a similar section of the union's predecessor organization as early as 1947. When the U.S.S.R. Association for Assistance to the United Nations was formed in March 1950, he was elected a member of the Central Board, and has been deputy chairman of the organization since at least November 1958.

Golunskiy, who joined the party in 1941, began his diplomatic career in 1943, when he joined the Ministry of Foreign Affairs as an interpreter and adviser. Fluent in English, he attended the important wartime conferences in Moscow (1943), Dumbarton Oaks (1944), Yalta, San Francisco, and Potsdam (all in 1945). He served as Associate Soviet Prosecutor at the Japanese War Crimes Trials in Tokyo from April to October 1946. Present at the meetings of the Council of Foreign Ministers in London (1946) and in Moscow (1947), Golunskiy also attended the Japanese Peace Conference at San Francisco (1951), the Four-Power Foreign Ministers' Conference in Berlin (1954), and the Eighth Session of the General Conference of UNESCO at Montevideo (November 1954).

As a member of Soviet delegations he attended the World Peace Council meeting in Helsinki (June 1955), the Conference on Danger to Mankind from Nuclear Explosions in London (August 1955), the Sixth Congress of the International Association of Democratic Lawyers at Brussels (May 1956), and the 11th and 12th Plenary Assemblies of the World Federation of United Nations Associations at Geneva (September 1957 and 1958, respectively). At the 11th Plenary Assembly he was elected a member of the federation's executive committee. In early 1956 Golunskiy visited London at the invitation of the London University to lecture on Soviet legal education and to study British legal procedures. He headed a delegation from the U.S.S.R. Association for Assistance to the United Nations which visited the United States in November 1958 at the invitation of its American counterpart organization.

Golunskiy is a coauthor of the following textbooks: "Textbook on the Juridical System" (1939), "Criminology" (1939), and "The Juridical System of the U.S.S.R." (1946). He was one of the compilers of the two-volume work entitled "The Nuremberg Trials: Records," (1951-52), and also edited a collection of documents entitled "History of the Legislation of the U.S.S.R. and R.S.F.S.R., on the Criminal Trial and Organization of the Court and Procuratura," 1917-54 (1955). At the present time he is one of the general editors of a scheduled new edition of a three-volume Diplomatic Dictionary. A member of the editorial board of "Sovetskoye gosudarstvo i pravo" (Soviet State and Law), a periodical of the Institute of Law of the U.S.S.R. Academy of Sciences, as early as 1940, Golunskiy became chief editor in January 1958.

Golunskiy has been awarded a number of orders and medals, including the Order of Patriotic War, First Class (1945).

Viisscher, Charles de, Belgium

Charles de Viisscher is a distinguished international jurist, who has served on the highest international tribunals, received many academic honors, and holds membership or office in an impressive group of academic societies.

M. de Viisscher was born in Ghent on August 2, 1884. He studied law at the Universities of Ghent and Paris, and holds honorary doctorates from the Universities of Paris, Nancy, and Montpellier. He began his career as professor of law at the University of Ghent in 1911 and became professor of international law at the University of Louvain in 1930. He served as legal counselor to the Belgian Ministry of Foreign Affairs for many years before the last war, and in 1923 was elected a member of the Permanent Court of Arbitration, serving until May 1957. During the interwar years De Viisscher filled various assignments with the League of Nations, including rapporteur of the Committee To

Amend the Covenant and the Committee for the Study of Conciliation Procedure. He was a member of the Committee of Jurists investigating the Corfu incident, and of the Committee of Experts for the Progressive Codification of International Law. He was Belgian delegate to the first Conference on the Codification of International Law, and served as a member of the Permanent Court of International Justice from 1937 until the Court's demise in 1946.

During the early years of the last world war, M. de Visscher remained in Belgium and entered the resistance movement, but later joined the Belgian Government-in-exile in London where he served as Minister Without Portfolio in 1944-45. In 1945 he represented Belgium on the Committee of Jurists which met in Washington to draft the Statute of the International Court of Justice, and in the same year was chief legal adviser to the Belgian delegation to the United Nations Conference on International Organization in San Francisco. He was a delegate to the first session of the United Nations General Assembly in 1946, and to the General Council of the United Nations Educational, Scientific, and Cultural Organization in 1946, 1949, and 1951. He was elected to the International Court of Justice in 1946 for a 6-year term, but failed of reelection in 1952. In 1954 he was chosen president of the BURAIMI Arbitration Tribunal considering a dispute between the United Kingdom and Saudi Arabia, but resigned the following year.

M. de Visscher is the author of numerous publications on international law. His memberships include the Institute of International Law which he joined in 1921 and of which he was Secretary-General (1925-27) and president (1947-48), the Royal Academy of Belgium, and the International Academic Union, which he served as president from 1947 to 1950. He is president of the Institute of International Relations in Brussels, and a member of the governing body of the Academy of International Law at The Hague. He was editor of the *Review of International Law and Comparative Legislation* from 1920 until at least 1957.

M. de Visscher lost a son in the last war.

Krylov, Sergey Borisovich, U.S.S.R.

Sergey Borisovich Krylov, doctor of juridical sciences, a leading Soviet international law expert, and a member of the party, died at the age of 71 on November 24, 1958. Long a professor and writer in the field of international law, he served as the Soviet representative on the International Court of Justice from 1946 to late 1951, when he withdrew his candidacy for reelection because of ill health. From late 1953 to December 1956 he was the Soviet member of the International Law Commission of the United Nations. After 1918 he had served as professor of public and private international law at Leningrad State University, and later at the Higher Diplomatic School of the U.S.S.R. Ministry of Foreign Affairs in Moscow and at Moscow State University. Through his lectures and publications Krylov undoubtedly had a considerable influence upon the present generation of Soviet jurists and diplomats.

Krylov was born in St. Petersburg on January 1, 1888. He began to teach at the University of St. Petersburg in 1910, after having been graduated by its law faculty. He served in the army from 1912 to 1918, and was an early supporter of the revolution. It was not until 1939 that he received his doctorate from Moscow State University. From 1943 until his death he headed the chair of international law at the Institute of [World Economics and] International Relations of the U.S.S.R. Academy of Sciences. Krylov served as deputy chairman of the Soviet Association for International Law and chief editor of its Yearbook of International Law from the foundation of that organization (apparently in 1957) until his death. He was elected a vice president of the "U.S.S.R.-Italy" Society at the founding meeting of that organization in February 1958.

From 1942 to 1946 Krylov served in the U.S.S.R. Ministry of Foreign Affairs as a legal advisor, attending the Dumbarton Oaks Conference (1944), the San Francisco United Nations Conference (1945), and the first session of the United Nations General Assembly (1946). He was head of the Soviet delegation to the 47th Conference of the World Association for International Law at Dubrovnik, Yugoslavia, in August 1956, when he announced that the U.S.S.R. had decided to join that organization, and was a member of the Soviet delegation to the conference of the same organization in New York 2 years later. In February 1958 he was a member of the Soviet delegation to the United Nations conference on the law of the sea at Geneva.

Included among his many publications in the field of international law are: "A Course in Aviation Law" (1933), "The Soviet Doctrine of International Law" (1947), and "The Creation of The Text of The U.N. Charter" (1949). He was

also coauthor of two textbooks: *International Private Law* (1930 and 1939) and *International Public Law* (1940). Krylov's talents have on occasion been used to further Soviet propaganda aims. In an article published in *Izvestiya* in May 1957 he wrote that the Soviet Union had always "scrupulously" observed its international treaties and carefully fulfilled its international obligations, whereas gross violations of international commitments by the United States had become common practice.

In 1916 Krylov married Yeva Nikolayevna Okuneva, who was born in 1880; they had a son, Boris, and a daughter, Yelena. At the time of Krylov's death he held the titles of Envoy Extraordinary and Plenipotentiary and of Distinguished Scientific Worker of the RSFSR. Along with other medals, he had been awarded the Badge of Honor and two Orders of the Red Banner of Labor (one in 1945).

Azeredo, Jose Philadelpho de Barros e (Born at Rio de Janeiro, March 13, 1894), Brazil

Doctor of law, Rio de Janeiro, 1914. Former student at the School of Political Science, Paris. Professor of philosophy at Pedro II College. Appointed in 1932, as the result of a competition, professor of civil law in the National Faculty of Law; later dean of the faculty and vice rector of the University of Brazil.

As a barrister, he was elected batonnier of the Rio de Janeiro Bar, 1930, and president of the Institute of Advocates of Brazil.

Was procureur general at the court of appeal, Rio de Janeiro; in 1942 was appointed judge of the Supreme Court of Brazil. Has just retired from this post.

Was a member of the Education Council, and of committees on legislation and on the revision of the Civil Code; Adviser to the Foreign Ministry and to the Geographical and Statistical Institute. Sometime mayor of Rio de Janeiro.

Is a member of the Societe de Legislation comparee, of the Institut Henri Capitant and of other national and foreign associations; represented his country at the Semaine Internationale de Droit, Paris; at the Second Congress of Comparative Law, The Hague; at the Eighth American Scientific Congress, Washington; at the meeting of the Union Internationale des Avocats, Paris, and the Inaugural Session of the Inter-American Bar Association.

Author of articles on law, opinions, awards and lectures; has written on special subjects, such as real property, authors' rights, the theory of obligations, the execution of awards, etc.

Is a member of the Brazilian Section of the Institute of Intellectual Cooperation, and of the Brazilian Society of International Law. Has published an essay entitled "Treaties and private interests in Brazilian Law" in the bulletin of the above society.

Fabela, Isidro, Mexico

The well-known Mexican jurist, writer and diplomat, Isidro Fabela, served as a member of the International Court of Justice at The Hague from 1946 to 1955. He has contributed articles to various newspapers throughout Latin America and has written books on literature, poetry and international affairs.

Born on June 2, 1882 in Atlacomulco, Mexico, Fabela graduated with a law degree from the National University of Mexico in 1908. After establishing a law practice, he entered politics and was elected to the Mexican Congress, but left this post in 1913 to join the revolution of Coahuila. Fabela was Minister of Foreign Affairs under the Constitutionalist Government and later served in diplomatic posts in Europe in 1915, in Latin America from 1916 to 1920, and as Minister to Germany in 1920. He held a professorship in international law at the National University of Mexico in 1921, was a deputy from 1922 to 1923 and a judge on the Italo-Mexican International Arbitration Commission from 1928 to 1932, in addition to his law practice. In 1936 Fabela was appointed a member of the Permanent Court of Arbitration at The Hague. Upon the death of the incumbent Governor of the State of Mexico in 1941, he was appointed to finish the 4-year term.

Fabela is married and speaks English and French.

4. LIST OF CONTENTIOUS CASES AND REQUESTS FOR ADVISORY OPINIONS CONSIDERED BY INTERNATIONAL COURT OF JUSTICE¹*Contentious cases*

Name of case	Parties	Result
<i>The Corfu Channel case (merits)</i>	United Kingdom v. Albania.	Judgment of Apr. 9, 1949.
<i>The Corfu Channel case (compensation)</i>	United Kingdom v. Albania.	Judgment of Dec. 15, 1949.
<i>The Corfu Channel case (preliminary objection)</i>	United Kingdom v. Albania.	Judgment of Mar. 25, 1948.
<i>Fisheries case</i>	United Kingdom v. Norway.	Judgment of Dec. 18, 1951.
Case concerning the protection of French nationals and protected persons in Egypt.	France v. Egypt.	Order of Mar. 29, 1950.
<i>Asylum case</i>	Colombia v. Peru.	Judgment of Nov. 20, 1950.
Case concerning rights of nationals of the United States of America in Morocco.	France v. United States of America.	Judgment of Aug. 27, 1952.
Request for interpretation of the Judgment of Nov. 20, 1950, in the <i>Asylum case</i> .	Colombia v. Peru.	Judgment of Nov. 27, 1950.
<i>Itaya de la Torre case</i>	do.	Judgment of June 13, 1951.
<i>Ambatiello case</i>	Greece v. United Kingdom.	Judgment of July 1, 1952 (preliminary objection). Judgment of May 19, 1953 (merits).
<i>Anglo-Iranian Oil Co. case</i>	United Kingdom v. Iran.	Judgment of July 22, 1952 (preliminary objection).
<i>The Minguiera and Echehos case</i>	France v. United Kingdom.	Judgment of Nov. 17, 1953.
<i>Nottebohm case</i>	Liechtenstein v. Guatemala.	Judgment of Nov. 18, 1953 (preliminary objection). Judgment of Apr. 6, 1955 (2d phase).
Case of the monetary gold removed from Rome in 1943.	Italy v. France, United Kingdom and United States.	Judgment of June 15, 1954 (preliminary objection).
<i>"Electricité de Beyrouth" Co. case</i>	France v. Lebanon.	Order of July 29, 1954.
Treatment in Hungary of aircraft and crew of United States of America.	United States v. Hungary.	Order of July 12, 1954.
Treatment in Hungary of aircraft and crew of United States of America.	United States v. Union of Soviet Socialist Republics.	Do.
Aerial incident of Mar. 10, 1953.....	United States v. Czechoslovakia.	Order of Mar. 14, 1956.
<i>Antarctica case</i>	United Kingdom v. Argentina.	Order of Mar. 16, 1956.
<i>Antarctica case</i>	United Kingdom v. Chile.	Do.
Aerial incident of Oct. 7, 1952.....	United States v. Union of Soviet Socialist Republics.	Order of Mar. 14, 1956.
Case of certain Norwegian loans.....	France v. Norway.	Judgment of July 6, 1957.
Case concerning right of passage over Indian territory.	Portugal v. India.	Pending.
Case concerning the application of the convention of 1902 governing the guardianship of infants.	Netherlands v. Sweden.	Judgment of Aug. 28, 1958.
<i>Interhandel case</i>	Switzerland v. United States.	Order of Oct. 24, 1957 (interim measures). Judgment of Mar. 21, 1959 (preliminary objections).
Aerial incident of July 27, 1955.....	Israel v. Bulgaria.	Judgment of May 26, 1959.
Aerial incident of July 27, 1955.....	United States v. Bulgaria.	Pending.
Aerial incident of July 27, 1955.....	United Kingdom v. Bulgaria.	Order of July 27, 1959.
Case concerning sovereignty over certain frontier land.	Belgium v. Netherlands.	Judgment of June 20, 1959.
Case concerning the arbitral award made by the King of Spain on Dec. 23, 1906.	Honduras v. Nicaragua.	Pending.
Case concerning the aerial incident of Nov. 7, 1954.	United States v. Union of Soviet Socialist Republics.	Order of Oct. 7, 1959.
Case concerning the temple of Preah Vihear.	Cambodia v. Thailand.	Pending.
Case concerning the Barcelona Traction Light & Power Co., Ltd.	Spain v. Belgium.	Do.
Case concerning the "Compagnie du Port des Quais et des Entrepôts de Beyrouth" and the "Société Radio-Orient."	France v. Lebanon.	Do.

¹ Summary prepared by Department of State.

Advisory opinions

Name of case	Result
Conditions of admission of a State to membership in the United Nations (art. 4 of the charter).	Advisory opinion of May 28, 1948.
Reparation for injuries suffered in the service of the United Nations.....	Advisory opinion of Apr. 11, 1949.
Interpretation of peace treaties with Bulgaria, Hungary, and Rumania....	Advisory opinion of Mar. 30, 1950 (1st phase). Advisory opinion of July 18, 1950 (2d phase).
Competence of the General Assembly for the admission of a State to the United Nations.	Advisory opinion of Mar. 3, 1950.
International status of South West Africa.....	Advisory opinion of July 11, 1950.
Reservations to the convention on the prevention and punishment of the crime of genocide.	Advisory opinion of May 28, 1951.
Effect of awards of compensation made by the United Nations Administrative Tribunal.	Advisory opinion of July 13, 1954.
Voting procedure on questions relating to reports and petitions concerning the Territory of South West Africa.	Advisory opinion of June 7, 1955.
Judgments of the Administrative Tribunal of the ILO upon complaints made against the UNESCO.	Advisory opinion of Oct. 23, 1956.
Admissibility of hearings of petitioners by the Committee on South West Africa.	Advisory opinion of June 1, 1956.
Constitution of the Maritime Safety Committee.....	Pending.

(The committee received a number of communications simply asking to be recorded in favor of, or in opposition to, repeal of the Connally amendment. Communications of this kind have not been included in the printed record but have been available to the committee for its consideration.)

AMERICAN BAR ASSOCIATION SECTION OF INTERNATIONAL AND COMPARATIVE LAW

REPORT

ON

The Self-Judging Aspect of the United States' Domestic Jurisdiction Reservation with Respect to the International Court of Justice¹

August, 1959

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¹ (See next p. for FN²)

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In order to put our problem in perspective and to try to contribute to improved understanding of it, we have included in this report some basic historical facts and data regarding the International Court of Justice and its work. The report should be read as a whole; but it may be useful to note that the conclusions are set out in Part VIII, beginning at page 59, together with a summary of the reasons for them.

INTRODUCTION

When the United States, in 1946, filed its Declaration of Adherence under Article 36 of the Statute of the International Court of Justice,¹ it did so with the reservation that it would not apply to:

"disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America."

The last eight words of this reservation,² which were added to the reservation as the result of action on the floor of the Senate, thus left it to the United States itself, rather than to the Court as provided by Article 36(6) of the Statute, to determine whether any dispute to which it is a party involves a matter within its domestic jurisdiction. Whether or not it would ever do so, the United States thus asserted the right to use as a complete defense to any case brought against it in the Court, however plainly not a domestic matter, the fact that the United States had itself determined the case to be a domestic matter. In short, the United States reserved to itself a veto power with respect to the jurisdiction of the International Court of Justice.

¹ Hereinafter the United States Declaration of Adherence will sometimes be called "the United States' Adherence"; the Statute of the International Court of Justice will be called "the Statute"; and the Court itself will sometimes be called "the Court" or the "I. C. J.".

² Hereinafter usually called the "Self-Judging Domestic Jurisdiction Reservation", or simply the "Self-Judging Reservation".

The Self-Judging Domestic Jurisdiction Reservation was followed by similar reservations by 6³ other of the 38 nations which currently accept the Court's compulsory jurisdiction.⁴ It also, as a matter of law, gave rise to a reciprocal right, on the part of any country against whom the United States might bring suit in the Court, to use as a defense a determination by that other country that the case involved a matter within *its* domestic jurisdiction, since the United States' obligation under Article 36(2) exists only "in relation to any other state accepting the same obligation."⁵

While the Court has served a useful purpose and has had at least 43 cases or requests for advisory opinions brought before it since it succeeded the Permanent Court of International Justice and began to sit on April 18, 1946, it has not played as large a part as had been hoped, and expected, in the quest for the worldwide rule of law. This is true even without taking into account the refusal of Iron Curtain countries to permit the Court to decide cases involving them,⁶ for the countries of the Free World, including the United States, have not utilized the Court freely or given it the prestige and strength it might have been expected by now to have attained.

Thoughtful studies have been prepared as to why this is so and many factors have been suggested.⁷ There has been a growing belief, however, that the self-judging aspect of some of the domestic jurisdiction reservations is one of the chief hindrances to the use and development of the Court.

The immediate reason for the appointment of this Committee was the submission of two reports bearing on the subject to the Los Angeles meeting of the A. B. A. in August, 1958. One was the report of the Special Committee on International Law Planning, the "Dewey" Committee, to the A. B. A. House of Delegates. It said:

"The committee believes that the withdrawal of the United States reservation to the jurisdiction of the International Court, to the extent that it allows the United States unilaterally to determine which disputes lie essentially

³ On July 10, 1959, after the body of this report had been completed, the French government withdrew the self-judging reservation of domestic jurisdiction contained in its declaration of adherence. Thus, after July 10, 1959, 5 rather than 6 states (in addition to the United States) have declarations containing a self-judging reservation. See page 22, *infra*.

⁴ As well as by one other, India, which has since withdrawn its acceptance of compulsory jurisdiction altogether.

⁵ See *Case of Certain Norwegian Loans* (France v. Norway), [1957] I. C. J. Rep. 9, 23-24.

⁶ Although one or another Russian Judge has at all times been a member of the Court and has usually voted with the majority.

⁷ E.g., Honig, *The Diminishing Role of the World Court*, 34 Int'l Aff. 184 (1958); Waldock, *Decline of the Optional Clause*, 32 Brit. Yb. Int'l L. 244 (1955).

within its own jurisdiction, would be a most salutary step. It would be a demonstration of faith in the rule of law, and a persuasive example to others. We believe it would materially strengthen the position of the United States in the world community as a leader in efforts to achieve the goal of the settlement of all disputes by peaceful means."

The other was the report to this Section of its Committee on International Courts which recommended that the Section propose to the House of Delegates the following Resolution:

"RESOLVED, that the United States should amend its declaration accepting the compulsory jurisdiction of the International Court of Justice to omit therefrom the limitation imposed by the Connally Amendment so that paragraph (b) of the provisos would read:

"(b) disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America; . . ."

thereby omitting at the end the "veto" language—"as determined by the United States of America." This Section's Council, however, decided that further study was needed and, to that end, adopted the following resolution:

"RESOLVED, that the Chairman of the Section be and hereby is authorized and directed to appoint forthwith a committee of the council, including the divisional vice-chairman for International Law, the divisional vice-chairman for International Organizations, the chairman of the Committee on International Courts, the chairman of the Committee on Pacific Settlement of International Disputes, and the Section Delegate to the House of Delegates, to study thoroughly the Connally reservation to the United States declaration accepting the compulsory jurisdiction of the International Court of Justice, its effects in practice, and the pros and cons as to whether or not an attempt should be made to have it withdrawn; to cooperate with such other committees of the American Bar Association, as may have concerned themselves with said Connally reservation; and to report its recommendations to the Council and the Section no later than their spring meetings to be held in 1959, with full supporting data."

Since this Committee was thus instructed to study the subject thoroughly it began its work by having the following preliminary reports prepared:

<u>Subject</u>	<u>Prepared By</u>
Background History up to World War II	Richard F. Scott, Los Angeles
History of U. S. Participation in International Tribunals to World War II	Nicholas J. Campbell, Jr., New York City
History of the International Court of Justice	Eugene D. Bennett, Gerald M. Doppelt, San Francisco
Reservations to the Adherences of Other Nations to the International Court of Justice	Sedgwick W. Green, New York City

<u>Subject</u>	<u>Prepared By</u>
What is a "Domestic Dispute"?	John R. Stevenson, Ronald M. Dworkin, New York City
What is the Present Attitude Towards the Domestic Jurisdiction Reservation?	Terence H. Benbow, Francis Y. Sogi, New York City

This report is based largely on the above listed preliminary reports, each of which was the result of careful study, and would have been impossible without them. To all who participated in their preparation this Committee owes a large debt.

Professor Louis B. Sohn of Harvard has been good enough to read this report in draft form and give the Committee a number of factual corrections as well as his suggestions. Parts of the report were greatly improved by the provocative comments of James E. O'Brien of San Francisco. Nonetheless this report reflects only the Committee's views.

Of great assistance also was the Bibliography on the Domestic Jurisdiction Reservation which was prepared at our request under the direction of Arthur Charpentier, Librarian of The Association of the Bar of the City of New York, and published in that Association's publication, The Record, for December, 1958. A copy, including a later supplement, is attached as Appendix A.

Finally we acknowledge the careful and constructive help of Robert S. Rifkind, a Harvard Law student, in double-checking the accuracy of the work of both lawyers and printers.

I.

INTERNATIONAL TRIBUNALS PRIOR TO THE
INTERNATIONAL COURT OF JUSTICE, AND THE
EXTENT OF AMERICAN PARTICIPATION THEREINA. THE NINETEENTH CENTURY SYSTEM OF *Ad Hoc* ARBITRATION

Generally speaking, prior to the twentieth century there was no legal requirement for the pacific settlement of international disputes and virtually no regular forum for arbitration or judicial settlement. Most states doubtless agreed "in principle" that at least some kinds of disputes should be settled by arbitration, but there was no general agreement concerning matters of procedure and jurisdiction. No rule *required* that disputes be settled in a legal forum before they might get out of hand and there was little, if any, obligation to submit any type of dispute to any particular legal tribunal. Nineteenth century disputes could certainly be "peaceably settled," as most were, of course, through negotiation, conciliation, good offices, inquiry, or other such means.¹ If a disputant wished to arbitrate an international controversy, however, its procedural problems promptly multiplied.²

A rough system of *ad hoc* arbitration existed in the late eighteenth and nineteenth century, but it was awkward and procedurally difficult. A disputant seeking arbitration immediately faced such problems as: (1) creating his court, (2) defining its jurisdiction, (3) establishing its procedure and rules of evidence, (4) settling on the issues to be tried, (5) determining the law to be applied, and (6) creating safeguards in the event the court should overreach itself. As if these difficulties were not enough, the nineteenth century system also required all of the disputants to agree upon all the above matters in some considerable detail at the outset and also to agree that the dispute should be arbitrated. If an arbitration were to be conducted, the disputants were required to meet together in each case to negotiate a special treaty called a *compromis* or "special agreement" settling all the above matters.

When agreement could be reached on all these matters, the *ad hoc* arbitration system worked well. The disputes arising out of the Treaty of Peace with Great Britain of 1782-1783 were, pursuant to the Jay Treaty of 1794, referred to and resolved by three commissioners.³

¹ Cf. U. N. Charter art. 33, para. 1.

² An excellent technical analysis of arbitration problems is found in Carlston, *The Process of Arbitration* (1946).

³ 1 Malloy, *Treaties, Conventions, International Acts, Protocols, and Agreements between the United States and Other Powers, 1776-1909*, 590, 593 (1910); 2 Moore, *International Adjudications, Modern Series*, 373 (1930).

Subsequent arbitrations as to the United States-Canadian boundary,⁴ the San Juan water boundary,⁵ the Alaskan boundary,⁶ and the famous Alabama Claims,⁷ are well-known examples of successful references to arbitration of international disputes involving the United States. Those arbitrations and others are outstanding products of the system, but generally the procedural problems in arriving at arbitration were so imposing that it might be wondered how the nineteenth century system worked as well as it did, since when the parties could not reach agreement on the *compromis*, a dispute could not be settled by arbitration.

The United States has also, from an early date, been disposed to seek and permit the arbitration of contractual and non-contractual claims of its citizens against foreign governments, as well as those of foreign citizens against the United States. Among the treaties for the adjustment of such claims by arbitration were the Jay Treaty with Great Britain of 1794, relating to claims arising out of "irregular or illegal captures or condemnations of their vessels and other property",⁸ the treaty with Spain of August 11, 1802,⁹ the treaty with Mexico of April 11, 1839,¹⁰ and the treaty with Great Britain of February 8, 1853.¹¹

B. INSTITUTIONALIZED ARBITRATION IN THE TWENTIETH CENTURY

1. *The Permanent Court of Arbitration*

The earliest important attempt to regularize the procedure of arbitration was made in 1899 when the first Hague Convention on Pacific Settlement of Disputes¹² was successfully negotiated. The first Hague Convention created the so-called Permanent Court of Arbitration, which is more a permanent panel of arbitrators than a court in the usual sense of the term. This Permanent Court of Arbitration is still in existence, and plays a part in the selection of judges for the International Court of Justice. A permanent administrative council

⁴ 1 Malloy, *Treaties*, 615 and 646; see 1 Moore, *History and Digest of International Arbitrations to which the United States has been a Party*, 45-195 (1898).

⁵ 1 Malloy, *Treaties*, 714-716; see 1 Moore, *International Arbitrations* 196.

⁶ 1 Malloy, *Treaties*, 787-794.

⁷ See 1 Moore, *International Arbitrations* 495.

⁸ 1 Malloy, *Treaties*, 596.

⁹ 2 Malloy, *Treaties*, 1650.

¹⁰ 1 Malloy, *Treaties*, 1101.

¹¹ *Id.* at 665. As to the scope of these and similar claims conventions to which the U. S. has been a party, see 2 Hyde, *International Law*, §306 (2d ed. 1945).

¹² Text is found in Scott, *The Hague Conventions of 1899 and 1907*, at 41 (2d ed. 1915). The U. S. was among the 52 ratifying states. Its ratification instrument contained a reservation excluding "purely American questions".

and international bureau were also established by the Hague Convention to facilitate the more or less mechanical aspects of arbitration proceedings, but there was still no general obligation to arbitrate and no defined jurisdiction of the Permanent Court of Arbitration. In each case that came to the court, each disputant would have to indicate its consent to the jurisdiction of the court by adhering to a negotiated *compromis*. As in the case of purely *ad hoc* arbitration, the Hague Convention contained no general consent to the jurisdiction of the "court" and there was no general agreement on the scope of the "court's" jurisdiction. However, the Hague Convention of 1899 contained a recognition, in Article 20, of the need for "facilitating an immediate recourse to arbitration".

The Hague Convention of 1907¹⁸ took this one step further and provided in Article 53 that states could confer general jurisdiction on the Permanent Court of Arbitration by separate treaties and that the court could settle the terms of the *compromis* if the treaty should so provide, unless a party should make a declaration that the dispute was not arbitrable. Unless the independent treaty conferring jurisdiction provided that the very question of arbitrability could be decided by the court, that question was thus reserved to be decided independently by each disputant. Article 53 was the first instance known to us where this veto type of reservation was recognized in a general arbitration treaty.

The American delegates had been instructed by Secretary of State Elihu Root to go farther and propose an impartial permanent international court. He said, in part, in words of lasting significance:

"The method in which arbitration can be made more effective, so that nations may be more ready to have recourse to it voluntarily and to enter into treaties by which they bind themselves to submit to it, is indicated by observation of the weakness of the system now apparent. There can be no doubt that the principal objection to arbitration rests not upon the unwillingness of nations to submit their controversies to impartial arbitration, but upon an apprehension that the arbitrations to which they submit may not be impartial. It has been a very general practice for arbitrators to act, not as judges deciding questions of fact and law upon the record before them under a sense of judicial responsibility, but as negotiators effecting settlements of the questions brought before them in accordance with the traditions and usages and subject to all the considerations and influences which affect diplomatic agents. The two methods are radically different, proceed upon different standards of honorable obligation, and frequently lead to widely differing results. It very frequently happens that a nation which would be very willing to submit its differences to an impartial judicial determination is unwilling to subject them to this kind of diplomatic process. If there could be a tribunal which would pass upon questions between nations with the same impartial and impersonal judgment that the Supreme Court of the United States gives to questions arising between citizens of the different States, or between foreign citizens and citizens of the United States, there

¹⁸ See Scott, *op. cit. supra*, at 41. The U. S. was among the 31 ratifying states. Its instrument of ratification again excluded purely "American questions" and also expressed the U. S. option *not* to allow the court to settle the *compromis* as provided in Article 53.

can be no doubt that nations would be much more ready to submit their controversies to its decision than they are now to take the chances of arbitration. It should be your effort to bring about in the Second Conference a development of The Hague Tribunal into a permanent tribunal composed of judges who are judicial officers and nothing else, who are paid adequate salaries, who have no other occupations, and who will devote their entire time to the trial and decision of international causes by judicial methods and under a sense of judicial responsibility. These judges should be so selected from the different countries that the different systems of law and procedure and the principal languages shall be fairly represented. The court should be made of such dignity, consideration, and rank that the best and ablest jurists will accept appointment to it, and that the whole world will have absolute confidence in its judgment."¹⁴

But the American delegation was the only one instructed to support such a project¹⁵ and the court project floundered at that time due to inability to agree on the method to be adopted for selection of judges.

A third Hague Conference, scheduled for 1915, was precluded by World War I.

Despite these failures, many important cases involving the United States have been arbitrated under the aegis of the Permanent Court of Arbitration, including the *Pious Fund* case, the *North Atlantic Fisheries* case, the *Orinoco Steamship* case, the *Norwegian Ships* case, and the *Island of Palmas* case, each of which was a landmark in the development of international law.¹⁶ Use of the Permanent Court of Arbitration and *ad hoc* arbitrations has dwindled almost to the vanishing point in recent years, but they contributed to the respect for international judicial institutions and facilitated the subsequent creation of the Permanent Court of International Justice and the International Court of Justice.

2. Independent Arbitration Treaties

Following the creation of the Permanent Court of Arbitration, many bilateral arbitration treaties were negotiated for the purpose of conferring jurisdiction on it, and the United States has been a party to many such treaties. One series which, for the most part, is not now in force was negotiated in 1907 and 1908. A second series, of which many now remain in effect, was negotiated during the period between World War I and World War II.

Typical of the earlier series of treaties was the Arbitration Agreement with Ecuador of 1909¹⁷ in which the parties undertook to arbi-

¹⁴ Instructions to the American Delegates to the Hague Conference, 1907, in *Papers Relating to the Foreign Relations of the United States, 1907*, 1128, at 1135 (1910).

¹⁵ Carnegie Endowment for International Peace, *Yearbook* 1921, at 108.

¹⁶ These and other decisions are collected in 1 Scott, *Hague Court Reports* (1916) and 2 *id.* (1932).

¹⁷ 36 Stat. 2456, T. S. No. 549.

trate all legal disputes at the Permanent Court of Arbitration. However, the American treaty with Ecuador also limited the scope of the conferred jurisdiction by a proviso that to be arbitrable the legal disputes must not affect "the vital interests, the independence, or the honor of the two contracting states . . ." This exclusion, for all practical purposes, gave the contracting parties an effective means of escape in any case of real national or international importance. Moreover, in each case, a "Special Agreement" was to be negotiated defining the dispute and the scope of the powers of the court.

Two other treaties in the earlier series were the arbitration agreements of the United States with Great Britain and France, which were similar to the Ecuador Agreement except that in both the British and the French agreements Article 3 provided that if any dispute should arise concerning the question of whether a controversy was subject to arbitration, then the question of arbitrability would be referred to a Commission of Inquiry. If all but one Commissioner should say the dispute was arbitrable, then it would be referred to arbitration. In 1912, the Senate gave its consent to the ratification of these treaties but only with certain amendments. One amendment rejected Article 3, and other amendments specially excluded matters affecting immigration, educational institutions in the United States, the territorial integrity of the several states of the United States, and "the maintenance of the traditional attitude of the United States concerning American questions, commonly described as the Monroe Doctrine, or other purely governmental policy." As a result of these amendments, these treaties were never ratified by the President and did not come into effect.¹⁸

The second series of agreements for obligatory arbitration began with the Treaty with France of February 6, 1928.¹⁹ Another was the American-Belgium Agreement of 1929.²⁰ These arrangements provided that all differences relating to international law which were "susceptible of decision by the application of the principles of law or equity", and could not be adjusted by diplomacy or reference to the Permanent International Commission of Inquiry provided for therein, were to be submitted to the Permanent Court of Arbitration at the Hague or some other tribunal unless they involved matters within the domestic jurisdiction of the contracting parties, matters involving third parties, the application of the Monroe Doctrine, or matters involving the observance of the Covenant of the League of Nations. In each case, a special agreement was to be negotiated to

¹⁸ See 6 Hackworth, *Digest of International Law* 65 (1943).

¹⁹ 46 Stat. 2269, T. S. No. 785.

²⁰ 46 Stat. 2790, T. S. No. 823.

settle matters of (1) organization of the tribunal, (2) its powers, (3) the triable issues, and (4) the terms of reference. In the case of the United States, each such special agreement had to be made by the President with the advice and consent of the Senate.

The United States also became a party to the Inter-American Arbitration Treaty of January 5, 1929.²¹ This called for arbitration of matters of an international character arising between the parties which could not be adjusted by diplomacy and which were "juridical in their nature by reason of being susceptible of decision by the application of the principles of law". There were expressly included in this definition (1) controversies relating to the interpretation of a treaty, (2) any question of international law, (3) the existence of any fact which would constitute a breach of an international obligation, and (4) the nature and extent of the reparation to be made for the breach of an international obligation.²² On the other hand, controversies "within the domestic jurisdiction of any of the parties to the dispute and [which] are not controlled by international law" were expressly excluded. This treaty further provided for the formulation in each case of a special agreement defining the subject matter of the controversy, the organization of the court, and the rules which were to govern. While the treaty provided that if the parties could not agree as to the terms of the special agreement within three months they were to be formulated by the court, the ratification by the United States provided that the special agreement in each case could be made only by the President, with the advice and consent of the Senate.

The insistence by the United States in such treaties that there be a *compromis* approved by the Senate in each case discouraged the use of such arbitral procedures.

C. THE CENTRAL AMERICAN COURT OF INTERNATIONAL JUSTICE

The judicial problem of domestic jurisdiction, as we know it, could not arise in the *ad hoc* system of nineteenth century arbitration because if any party thought the dispute was domestic it would not be submitted to arbitration at all. The question of whether a dispute was domestic could arise under some of the bilateral systems of treaties, but generally the reservations contained in those treaties were so broad that it was unlikely that, as a practical matter, a ques-

²¹ 49 Stat. 3153, T. S. No. 886.

²² These four categories of disputes were taken from Article 36 of the Statute of the Permanent Court of International Justice; *cf.* Article 36 of the Statute of the International Court of Justice.

tion of domestic jurisdiction would be encountered. In most cases, the parties retained complete liberty to decide not only what cases would be submitted to arbitration, but also the liberty to define precisely the issues to be decided and the governing rules of law. With the advent of permanent judicial courts, however, states for the first time conferred general jurisdiction over their international disputes to a specific judicial tribunal. When this occurred, justiciable questions were more likely to arise as to whether disputes were "domestic," rather than international and should therefore be left to local law and process.

Nonetheless, the problem of "domestic jurisdiction" was apparently not seriously considered at the outset of the first permanent international court, the Central American Court of Justice, which was founded by the Convention of December 20th, 1907.²³ Article I of the Convention provided that the parties would submit to the court ". . . all controversies or questions which may arise among them of whatsoever nature and no matter what their origin may be"; Article XXI provided that questions of law should be decided by the "principles of international law"; and there was no express "domestic jurisdiction" limitation of any kind. The Central American Court thus had broad jurisdiction over international disputes.

This court existed for only ten years and decided only ten cases, but one of them involved an important question of domestic jurisdiction. In the *Case of the Election of Gonzalez Flores as President of Costa Rica*,²⁴ the plaintiffs, who were individuals²⁵ challenged the validity of a Costa Rican presidential election. The court decided unanimously, however, that it could not take jurisdiction because the complaint invited the court to intervene in Costa Rican domestic affairs and did not present an international question.

The Central American Court had a checkered history that cannot be recounted here. Judge Hudson has observed that the Convention establishing the court contained an excessive grant of jurisdiction at the outset,²⁶ and its history may provide a useful lesson that international courts should not be encumbered with excessive jurisdiction.

²³ For text, see 2 Am. J. Int'l L. Supp. 231 (1908); 2 *Papers Relating to the Foreign Relations of the United States* 692 (1907). For a survey of the work of the court, see Hudson, *The Permanent Court of International Justice, 1920-1942*, at 42-70 (1943).

²⁴ 4 Corte de Justicia Centroamericana, *Anales*, Nos. 11-13, pages 1-12 (1915).

²⁵ The court's jurisdiction was unusual, also, in that individuals could commence actions against foreign states.

²⁶ Hudson, *The Permanent Court of International Justice, 1920-1942*, at 69.

D. THE PERMANENT COURT OF INTERNATIONAL JUSTICE

The immediate predecessor of the present Court was the quite similar Permanent Court of International Justice (P. C. I. J.). Indeed, the similarity between the two courts is so great that they are often considered as representing a continuation of a single judicial body,²⁷ and both are often referred to as the "World Court". Unlike the present Court, however, the P. C. I. J. was created independently of any general international organization. The Covenant of the League of Nations anticipated the creation of the P. C. I. J., but did not embody the court within the League's structure.²⁸ In 1920, the P. C. I. J. came into existence when the requisite number of documents were deposited ratifying the Protocol of Signatures.²⁹

The P. C. I. J. was a thoroughly judicial structure, but, unlike the Central American Court, had no generally defined or fixed jurisdiction. Article 36 of the Statute of the P. C. I. J. provided for its jurisdiction to be derived, for the most part, from the subsequent consent of the parties. Like the present Court Statute, the P. C. I. J.'s Statute did not itself confer any specific jurisdiction. Article 36 of both Statutes provides that the jurisdiction of the court comprises "all cases which the parties refer to it and all matters specially provided for in treaties and conventions in force." Thus the general jurisdiction of the court in contentious cases was no broader than the jurisdiction of the Permanent Court of Arbitration; at the outset, the parties retained control over the scope of the court's jurisdiction. It was through the so-called "optional clause" in Article 36, which provided for general grants of jurisdiction at the option of individual nations, that the P. C. I. J. expanded the scope of judicial treatment of international disputes.

The so-called "optional clause" of the P. C. I. J. Statute was similar to the "optional clause" of the present Court Statute. Article 36 of both Statutes gives a state the option to make a binding declaration that it accepts as "compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation" unconditionally or on condition of reciprocity, or for a certain time, the court's jurisdiction in disputes concerning the interpretation

²⁷ Thus, Article 36(5) of the Statute of the I. C. J. provides that declarations of adherence to the compulsory jurisdiction of the P. C. I. J. "shall be deemed . . . to be acceptances of the compulsory jurisdiction of the International Court of Justice . . ." Cf. *Case Concerning the Aerial Incident of July 27, 1955* (Israel v. Bulgaria) (Preliminary Objections), [1959] I. C. J. Rep. 127. See [1946-1947] I. C. J. Y. B. 15.

²⁸ Compare League of Nations Covenant, art. 14 with U. N. Charter, art. 7, para. 1.

²⁹ The text is reproduced in Hudson, *The Permanent Court of International Justice, 1920-1942* at 665 (1943), together with all pertinent documents mentioned herein concerning the organization and jurisdiction of the court.

of a treaty, any question of international law, the existence of any fact constituting a violation of an international obligation, and the nature or extent of reparations to be made for the breach of an international obligation. The P. C. I. J. Statute, like the Statute of the present Court, provided, in Article 36:

"In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."

During the active life of the P. C. I. J. (1922-1945), 42 members of the League of Nations filed declarations accepting the compulsory jurisdiction of the court, and the "optional clause" provided the ultimate source of jurisdiction in approximately 30% of the 38 contentious cases that came before the court.⁸⁰

Unlike the present Court, which is subject to Article 2(7) of the U. N. Charter,⁸¹ the P. C. I. J. was subject to no *express* exclusion of domestic questions from its jurisdiction. However, a number of cases before the P. C. I. J. involved claims that matters were domestic. In the *Tunis and Morocco Nationality Decrees* case,⁸² the court overruled a domestic jurisdiction challenge to the jurisdiction of the League of Nations Council because, provisionally, it believed the matters at issue subject to international law. In *Treatment of Polish Nationals in Danzig*⁸³ the court rejected a contention that Poland was entitled to submit to compulsory international jurisdiction matters which the court concluded were within the domestic jurisdiction of Danzig. Neither of these cases involved a challenge to the court's jurisdiction. In the only two cases in which the court's jurisdiction was challenged on domestic jurisdiction grounds, the issue, first raised by preliminary objections, was joined to the merits, and then went undecided when the cases were subsequently withdrawn.⁸⁴

Since, as noted above, there was no express, general exclusion of domestic jurisdiction questions from the jurisdiction of the P. C. I. J., there were, under the "optional clause", cautiously drafted

⁸⁰ In addition, the P. C. I. J. received 27 requests for advisory opinions. See Hudson, *The Permanent Court of International Justice, 1920-1942*, at 779.

⁸¹ Article 2(7) provides: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII." See note 4 on page 52, *infra*.

⁸² P. C. I. J. ser. B, No. 4, at 7 (1923).

⁸³ P. C. I. J. ser. A/B, No. 44, at 4 (1932).

⁸⁴ *Losinger & Company*, P. C. I. J. ser. A/B, No. 67, at 15 (1936); *Electricity Company of Sofia and Bulgaria*, P. C. I. J. ser. A/B, No. 77, at 82 (1939).

declarations which contained reservations of various sorts excluding domestic matters. The first of these was signed by Greece on September 12, 1929, and excluded "disputes relating to the territorial status of Greece, including disputes relating to its rights of sovereignty over its ports and lines of communication." On September 19 and 20, 1929, after consultation among themselves, the United Kingdom, Australia, Canada, India, New Zealand, and the Union of South Africa deposited declarations excluding "disputes with regard to questions which by international law fall exclusively within the jurisdiction" of the state making the declaration. An Argentine declaration excluded "questions which, by international law, fall within the local jurisdiction or the constitutional regime of each State." Other domestic jurisdiction reservations were made by Albania, Brazil, Egypt, Iran, Iraq, Poland, Roumania, and Yugoslavia (the Argentine, Egyptian, Iraqi and Polish declarations never entered into force).⁸⁵ The majority of declarations, however, contained no condition or reservation at all, or only the condition of reciprocity.

The United States is not represented in the above enumeration because, of course, the United States never became a party to the P. C. I. J. Nor is much to be learned relevant to the subject at hand from the discussions of the period because the question of domestic jurisdiction was not among the conditions and limitations which the United States laid down as a prerequisite to its acceptance of the court.⁸⁶ Reservations proposed by this country concerning advisory opinions sought to restrict an area where the court's jurisdiction might expand, but domestic jurisdiction was not mentioned. This may be explained by the fact that the proposed basis for adherence by the United States to the Protocol of the P. C. I. J. did not envisage the grant of any jurisdiction and, strictly speaking, did not invite a domestic jurisdiction type of problem. In this connection, Judge Hudson has remarked that at no time did the United States propose to make a declaration accepting the compulsory jurisdiction of the court.⁸⁷ Any such proposal would certainly have been premature in view of the fact that the Senate, on January 29, 1935, failed to give its advice and consent to the President for the ratification of the Protocol by which the United States would have adhered to the Statute of the court.

Nonetheless it is worth remembering that Presidents Harding, Coolidge, Hoover and Roosevelt all advocated adherence to the

⁸⁵ See Briggs, *The United States and the International Court of Justice: A Re-examination*, 53 Am. J. Int'l L. 301, 302-03 (1959).

⁸⁶ Documentation and discussion of this matter is found in Hudson, *The International Court of Justice, 1920-1942* at 218 *et seq.*

⁸⁷ *Id.*, at 237.

P. C. I. J. Former President Hoover and Hugh Gibson in their book, *The Problems of Lasting Peace*, summarized this history as follows:

"President Harding and Secretary Hughes recommended the Protocol to the Senate in 1923, despite the fact that the United States was not a member of the League, with recommendations as to special agreement by which the United States would participate in all questions respecting the Court. The Senate approved it three years later, but with reservations concerning Advisory Opinions that would require serious alteration in the Statute of the Court. No modification of the attitude of the Senate could be obtained, despite the urgings of President Coolidge and Secretary Kellogg. In 1929, Mr. Hoover asked Mr. Elihu Root to go to Europe and endeavor to find a formula meeting the Senate reservations. This Mr. Root was able to do, and Mr. Hoover and Secretary Stimson repeatedly urged it upon the Senate, but without avail. President Roosevelt and Secretary Hull have likewise urged it, but unsuccessfully."⁸⁸

As the same authors put it:

". . . time proved that there was no moment after the defeat of adherence to the League Covenant in the Senate when any political party could carry the League with the American people. And no political party did thereafter propose it. The constant refrain in the news columns of conflict, military alliances, intrigue and power politics from Europe was a requiem on American participation. The fact that every President since the war—Harding, Coolidge, Hoover, and Roosevelt—failed by every influence to secure approval of the Senate even to membership in the World Court is evidence of the hardening of American reaction. And this is written regretfully by the authors of this book, who ardently supported adherence to the League and the Court as at least an experiment in preserving peace."⁸⁹

E. THE AMBIGUITY OF THE TRADITIONAL AMERICAN APPROACH

This brief history indicates a recurring ambiguity in American aspirations in the field of pacific settlement of international disputes. On the one hand, the United States has consistently supported the ideals of pacific settlement of disputes, arbitration, and the rule of law. America gave strong impetus to the Permanent Court of Arbitration and the spate of arbitration treaties both before and after World War I. American statesmen such as Elihu Root and James Brown Scott provided indispensable wisdom and skill in preparing the Statute of the Permanent Court of International Justice. Included among the most respected judges of that court were such renowned Americans as Charles Evans Hughes, Frank B. Kellogg, John Basset Moore, and Manley O. Hudson. This view of the picture represents the constant pressure in America for the advance of civilization by judicial settlement of international disputes under the rule of law.

But the other side of the picture is also readily apparent. Never in the period under review did the United States accept an international judicial system without some kind of crippling reservation.

⁸⁸ Hoover and Gibson, *The Problems of Lasting Peace*, 184-5 (1942).

⁸⁹ *Id.* at 178-9.

Prior to World War II, the United States never advanced its commitments significantly beyond the *ad hoc* approach to arbitration, except that the machinery of the Permanent Court of Arbitration was accepted. When the independent arbitration treaties were ratified, far-reaching reservations were imposed; when the Permanent Court of International Justice was created, the United States refused to adhere even to the Protocol establishing it; and, as noted at the outset, even during the period of high hopes following World War II, adherence by the United States to the jurisdiction of the International Court of Justice under the "optional clause" was limited by reservations, including the Self-Judging Domestic Jurisdiction Reservation.

II.

THE UNITED STATES' ADHERENCE TO THE INTERNATIONAL COURT OF JUSTICE

The desire for permanent peace was never more intense than at San Francisco, as World War II drew to a close. The subcommittee on Article 36 (Compulsory Jurisdiction) unanimously reported:

"The Court, being the principal judicial organ of the United Nations, should possess definite jurisdiction, if not in all cases, at least in those cases which are peculiarly susceptible of judicial settlement, namely, legal disputes.

"It may be recalled that as far back as 1920 compulsory jurisdiction was proposed by the Committee of Jurists which drafted the existing statute. The Governments were not prepared at that time to accept the proposal and the result was the adoption of what is known as the optional clause.

"The exercise of compulsory jurisdiction by the Court will promote the rule of law among nations. Public opinion throughout the world is strongly in favor of conferring on the Court compulsory jurisdiction.

"The optional clause has been accepted by 45 out of 51 nations. By now the change from an optional to a non-optional basis would be a logical and desirable step in furthering the cause of international peace and justice."¹

Nonetheless the old optional clause of the P. C. I. J. was reenacted with only a few variations, as follows:

"ARTICLE 36.

"1. The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

"2. The states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agree-

¹ Doc. No. Jurist 43, IV/14/45, 14 U. N. Conf. Int'l Org. Docs. 286-7 (1945).

ment, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

"a. the interpretation of a treaty;

"b. any question of international law;

"c. the existence of any fact which, if established, would constitute a breach of an international obligation;

"d. the nature or extent of the reparation to be made for the breach of an international obligation.

"3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.

"4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court.

"5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.

"6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."

It will be noted that, under Section 5, declarations under Article 36 of the Statute of the P. C. I. J. continued in effect.

The Charter of the United Nations was signed on June 26, 1945, near the Golden Gate. Annexed was the Statute of the present Court, including the above-quoted Article 36 which governs its jurisdiction. The advice and consent of the Senate was quickly given, on July 28th, and the Charter and Statute of the Court became effective for the United States on October 24, 1945.²

Since the United States had never adhered to the Statute of the Permanent Court of International Justice, it had to file a declaration under Article 36 if it were to be subject, to any extent, to the Court's compulsory jurisdiction.

To this end Senate Resolution 196 was introduced in the 79th Congress on November 28, 1945. It read as follows:

"RESOLUTION

"Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the deposit by the President of the United States with the Secretary General of the United Nations, whenever that official shall have been installed in office, of a declaration under paragraph 2 of article 36 of the Statute of the International Court of Justice recognizing as compulsory ipso facto and without special agreement in relation to any other state accepting the same obligation, the jurisdiction of the International Court of Justice in all legal disputes hereafter arising concerning—

a. the interpretation of a treaty;

b. any question of international law;

² 59 Stat. 1031, T. S. No. 993.

c. the existence of any fact which, if established, would constitute a breach of an international obligation;

d. the nature or extent of the reparation to be made for the breach of an international obligation.

Provided, That such declaration should not apply to—

a. disputes the solution of which the parties shall entrust to other tribunals by virtue of agreements already in existence or which may be concluded in the future; or

b. disputes with regard to matters which are essentially within the domestic jurisdiction of the United States.

Provided further, that such declaration should remain in force for a period of five years and thereafter until the expiration of six months after notice may be given to terminate the declaration."

Hearings were held before a subcommittee of the Senate Committee on Foreign Relations on July 11, 12 and 15, 1946. It is of incidental interest to note that the first witnesses were the following representatives of the American Bar Association: the late Senator Willis Smith, then President of the A.B.A.; the late Charles W. Tillet of North Carolina; John G. Buchanan of Pittsburgh, then President of the Pennsylvania Bar Association; Circuit Judge Orie L. Phillips; and Edgar Turlington, of Washington, D. C. All five testified in support of the passage of the resolution. The Self-Judging Reservation was not discussed by them because it had not yet been proposed to the subcommittee.

In the course of the hearings Senator Austin suggested that proviso "b" read:

"b. disputes which are held by the United States to be with regard to matters which are essentially within the domestic jurisdiction of the United States."

lest, for example, immigration matters be deemed by others not domestic.³ Among the witnesses to testify before the subcommittee was Dr. Lawrence Preuss, of the University of Michigan, who had participated in the work preparatory to the drafting of the Court's Statute. He testified that the adoption of Senator Austin's suggestion "would be an extremely retrogressive step and would be taking away with one hand what we purport to be giving with the other."⁴

In a memorandum, John Foster Dulles referred to the domestic jurisdiction problem as follows:

"Domestic jurisdiction.—Compulsory jurisdiction of the Court should not extend to matters which are essentially within the domestic jurisdiction of the United States.

"Comment: Article 2(7) of the Charter, among other things, provides, in substance, that nothing contained in the present Charter shall require the members to submit to settlement under the Charter matters which are essentially within the domestic jurisdiction of any state. The declaration under the statute should preserve, and not seem to waive, that limitation.

³ *Hearings on S. Res. 196 Before a Subcommittee of the Senate Committee on Foreign Relations*, 79th Cong., 2d Sess., page 36 (1946).

⁴ *Id.* at 84.

"If condition 3 (*supra*) is expressed in the declaration that would make it unnecessary to stipulate who decides what is domestic, for that condition would prevent encroachment on domestic jurisdiction by an alleged unwritten growth of international law not recognized by the United States."⁵

In his "Condition 3", Mr. Dulles had suggested that if the basic law governing any case were not in an existing United States treaty or convention, the parties to the dispute should agree in advance as to the applicable principles of international law. (This suggestion was later defeated on the floor of the Senate by a vote of 49-11.⁶)

After no further discussion of who should decide what is domestic the Committee on Foreign Relations unanimously reported Senate Resolution 196 (quoted above), without change, for favorable Senate action.⁷ The Committee Report referred to the overwhelming public support in the United States for the Court's jurisdiction over legal disputes, and to the A.B.A. House of Delegates' action to that end on December 18, 1945.⁸ It said specifically:

"So long as individual members can refuse to be haled into the Court a regime of law in the international community will never be realized. The most important attribute of this or any other court is to hear and decide cases. For this function it must have jurisdiction of the parties and the subject matter."⁹

The Report then emphasized these limitations on the Court's jurisdiction:

1. The dispute must be "legal".
2. The dispute must involve the interpretation of a treaty, a question of international law, the existence of any fact which, if established, would constitute a breach of an international obligation, or the nature or extent of the reparation to be made for the breach of an international obligation.
3. The jurisdiction conferred is reciprocal.
4. The dispute must arise "hereafter".
5. The parties may entrust the dispute to another tribunal. (*Cf.* United Nations Charter, Article 95).
6. The dispute must not be "essentially within the domestic jurisdiction."¹⁰

⁵ *Id.* at 45.

⁶ 92 Cong. Rec. 10705 (1946).

⁷ S. Rep. No. 1835, 79th Cong. 2d Sess. (1946). The following Senators were members of the Senate Foreign Relations Committee in 1946: Tom Connally, Walter F. George, Robert F. Wagner, Elbert D. Thomas, James E. Murray, Claude Pepper, Theodore F. Green, Alben W. Barkley, Joseph F. Guffey, James M. Tunnell, Carl A. Hatch, Lister Hill, Scott W. Lucas, Arthur Capper, Robert M. LaFollette, Jr., Arthur H. Vandenburg, Wallace H. White, Henrik Shipstead, Warren R. Austin, Styles Bridges, Alexander Wiley, and Chan Gurney.

⁸ *Id.* at 2-3.

⁹ *Id.* at 3.

¹⁰ *Id.* at 4-5.

With respect to this sixth limitation, the Report said:

"A provision similar in principle is found in article 2, paragraph 7, of the Charter, providing that nothing in the Charter shall authorize the organization to intervene in essentially domestic matters. The committee feels that the principle is also implicit in the nature of international law, which, under article 38, paragraph 1, of the statute, it is the duty of the Court to apply. International law is, by definition, the body of rights and duties governing states in their relations with each other and does not, therefore, concern itself with matters of domestic jurisdiction. The question of what is properly a matter of international law is, in case of dispute, appropriate for decision by the Court itself, since, if it were left to the decision of each individual state, it would be possible to withhold any case from adjudication on the plea that it is a matter of domestic jurisdiction. It is plainly the intention of the statute that such questions should be decided by the Court, since article 36, paragraph 6, provides:

"In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."

As to a self-judging domestic jurisdiction reservation, the Report said:

"It was also brought to the attention of the subcommittee that a number of states, in filing declarations under the Statute of the Permanent Court of International Justice, interposed reservations similar to that of the resolution under consideration, but in no case did they reserve to themselves the right of decision. The committee therefore decided that a reservation of the right of decision as to what are matters essentially within domestic jurisdiction would tend to defeat the purposes which it is hoped to achieve by means of the proposed declaration as well as the purpose of article 36, paragraphs 2 and 6, of the Statute of the Court."¹¹

The Senate began to consider S. Res. 196 on July 31, 1946. Senator George was the first to refer to the question here under consideration. He said:

"This resolution raises definitely and distinctly the question which the Senate should consider, and which I shall insist that it consider; namely, whether this International Court, itself, by the acceptance of compulsory jurisdiction upon our part, acquires the function of determining whether a question is essentially a domestic question or whether the Court itself has the final right to say whether any juridical matter submitted to it involves a domestic question. Let me say that if I can define what is going on in this country and what has been going on, it is that a large number of Americans think that by adopting resolutions and hastily entering into international agreements, we can make certain and steadfast the peace of the earth. I am as strongly in favor of any step which looks to the peace as any man who has ever occupied a seat in this body has been or can be; but we are not going to obtain peace by the mere passage of laws. We are not going to put an end to war by the mere passage of laws or the adoption of resolutions, or by adhering to every type and kind of international agreement which anyone in the State Department or elsewhere can think of."¹²

¹¹ *Id.* at 5.

¹² 92 Cong. Rec. 10557 (1946).

Senator Thomas later said, in reply:

"Fifth. The declaration would not confer upon the Court jurisdiction over matters which are essentially within the domestic jurisdiction of the United States. This limitation is in conformity with the principle expressed in article 2 of the Charter: 'Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present Charter.'

"Some concern has been expressed in the past lest the Court be given jurisdiction over controversies involving such domestic issues as immigration and trade barriers. These are vital matters over which the sovereign state has traditionally exercised complete control and we certainly would not want the Court or any other international agency to order us to admit ten or twenty or fifty million additional immigrants to our shores.

"The resolution, together with article 2 of the Charter, clearly safeguard our national interests on this point. Moreover, I would remind you, Mr. President, that it is the function of the Court under the compulsory jurisdiction clause, to decide cases in accordance with the rules of international law. Clearly, therefore, it would be impossible to act since there is no international law dealing with the subject of immigration. That is a matter which we have often dealt with in the Senate and we have never had to take account of the international rights and duties of other states.

"The tariff is another case in point. Unless the United States deliberately enters into an international treaty subscribing to certain rights and duties, there is no international law on the subject which the Court could apply."¹³

After Senator Connally had introduced his amendment to add the words "as determined by the United States" at the end of proviso "b" of S. Res. 196, he disagreed with the statement in the Foreign Relations Committee's Report that such a proviso would tend to defeat the purposes of Article 36. He said:

"I do not agree with that. I think we have the right to adhere 100 percent, if we choose, and we have the right not to adhere at all. Therefore, as between those two extremes, we have a perfect right to adopt an amendment of this character, because the Charter provides that domestic questions may not be considered. The Charter provides that the United Nations have no jurisdiction over domestic questions. But under the Charter the Court might decide that immigration was an international question. It might decide that tariffs were an international question. It might decide that the navigation of the Panama Canal was an international question. It is pretty close to it. It might decide that the regulation of tolls through the Canal was an international question. So I submit the amendment and ask that it be printed and lie on the table."¹⁴

Senator Connally later explained his amendment as follows:

"The United States is the object of envy of many nations of the world and many peoples. Our Treasury is most attractive to them. Immigration to our shores is something they dream of. I do not favor and I shall not vote to make it possible for the International Court of Justice to decide whether a question of immigration to our shores is a domestic question or an international question. It is a domestic question, of course; but the

¹³ *Id.* at 10615.

¹⁴ *Id.* at 10624.

Court might contend it is international in character. The Court might say, 'A man leaves one country and migrates to another, and therefore an international question is involved, and suit may be brought against the United States because it discriminates against the citizens of a certain country by not giving them a sufficiently large quota.'

"Mr. President, do we wish to submit to the International Court the question whether we have a right to levy tariffs and duties and to regulate matters of that kind? They are purely domestic questions, and I do not propose to have the International Court have jurisdiction over them.

"Do we want the International Court of Justice to render judgment in a case involving the navigation of the Panama Canal? The Court might say, 'It is an international stream, like the Dardanelles, and the commerce of the world passes through it, and problems relative to it are international problems,' such problems are not international. In the case of the Panama Canal, our treasure bought it, our blood built it, and it is ours by right of construction. We do [sic] propose to submit to the jurisdiction of any tribunal at any time the right to say whether a question relative to it is a domestic question."¹⁵

Opponents of the proposed amendment noted that no other nation had imposed such a condition; that because of the reciprocal nature of the Court's jurisdiction, such an amendment would restrict the United States' own use of the Court; that the United States could not in practice afford to rely on such a condition; and that the amendment would even violate the express language of Article 36.¹⁶

Nonetheless, by a 51-12 vote, the amendment adding the self-judging domestic jurisdiction reservation was adopted.¹⁷

III.

RESERVATIONS TO THE ADHERENCES OF OTHER NATIONS TO THE INTERNATIONAL COURT OF JUSTICE

No nation had conditioned its adherence to the compulsory jurisdiction of either the P. C. I. J. or the I. C. J. on a self-judging domestic jurisdiction reservation up to the time of the signing of the U. S. Declaration by President Truman on August 14, 1946. Six present members of the Court have since followed the lead of the United States.¹ These are:

1947—Mexico

—Reserves "disputes arising from matters that, in the opinion of the Mexican Government, are within the domestic jurisdiction of the United States of Mexico".

¹⁵ *Id.* at 10695.

¹⁶ *Id.* at 10630-31, 10683-87.

¹⁷ *Id.* at 10697.

¹ Declarations currently in effect accepting the compulsory jurisdiction of the International Court are set forth in full in the Yearbook published by the Registrar of the Court at the Court's direction. As previously noted (page 2 *supra*), since the preparation of this report, France has withdrawn her self-judging reservation; thus, after July 10, 1959, five, rather than six, states in addition to the United States had such a reservation in their declarations.

- 1949—France —Reserves “differences relating to matters which are essentially within the national jurisdiction as understood by the Government of the French Republic”.²
- 1952—Liberia —Reserves “any dispute which the Republic of Liberia considers essentially within its domestic jurisdiction”.
- 1955—Union of South Africa —Reserves “disputes with regard to matters which are essentially within the jurisdiction of the Government of the Union of South Africa as determined by the Government of the Union of South Africa”.
- 1957—Pakistan —Reserves “disputes with regard to matters that are essentially within the domestic jurisdiction of the Government of Pakistan as determined by the Government of Pakistan”.
- 1958—The Sudan —Reserves “disputes in regard to matters which are essentially within the domestic jurisdiction of the Republic of The Sudan as determined by the Government of the Republic of The Sudan”.

India, by a declaration of January 7, 1956, altered its acceptance of the Court's compulsory jurisdiction to give it the right to determine whether matters fall within its reservation of domestic jurisdiction. However, India subsequently revoked its acceptance of the Court's compulsory jurisdiction. These acts by India may have been motivated by the filing of, and the decision on, preliminary objections in the *Case Concerning Right of Passage over Indian Territory* (Portugal v. India).³

Another variant of the self-judging reservation, not tied to the question of domestic jurisdiction, was that contained in the United Kingdom's declaration of April 18, 1957, which excluded from the Court's jurisdiction “disputes . . . relating to any question which, in the opinion of the Government of the United Kingdom, affects the national security of the United Kingdom or of any of its dependent territories.” This declaration was revoked by a new declaration, dated November 26, 1958, which contains no such reservation as to disputes based on events occurring thereafter, but retains the reservation as to disputes based on previous events.⁴

² The declaration deposited by France on July 10, 1959, reserves “disputes relating to questions which, by international law, fall exclusively within the domestic jurisdiction.” (Emphasis added). See Appendix D for full text.

³ [1957] I. C. J. Rep. 125, 143.

⁴ See Hudson, *The Thirty-Seventh Year of the World Court*, 53 Am. J. Int'l L. 319, 322-23 (1959).

A number of other countries, using various forms of language, have specifically reserved domestic disputes from the Court's jurisdiction, but have left it to the Court to decide whether the reservation is applicable. Such countries include Australia, Cambodia, Canada, El Salvador, Israel, New Zealand and the United Kingdom. Fairly typical is the declaration of the United Kingdom, which reserves "disputes with regard to questions which, by international law, fall exclusively within the jurisdiction of the United Kingdom."

It may be noted that even those who question the validity of a self-judging declaration recognize that a nation may accept the Court's compulsory jurisdiction under Article 36 as to less than the full gamut of subject matters set forth in Article 36(2). Thus, Judge Lauterpacht, although considering a declaration containing a self-judging domestic jurisdiction reservation invalid because in violation of Article 36(6), has said:

"In accepting the jurisdiction of the Court Governments are free to limit its jurisdiction in a drastic manner. As a result, there may be little left in the acceptance which is subject to the jurisdiction of the Court."⁵

An example of such a declaration is that of the United Arab Republic, which is limited to certain Suez Canal matters.⁶

It would thus be possible under Article 36 to accept the Court's jurisdiction simply as to, *e. g.*, treaties, while omitting all the other subject matters contained in Article 36(2); but such an approach has not been adopted in any nation's declaration.

However, a wide variety of matters is exempted from the Court's jurisdiction in various of the declarations. For example, Australia exempts disputes regarding its continental shelf, the natural resources thereof, and Australian waters unless the parties to the dispute have first agreed on a *modus vivendi* pending the Court's decision;⁷ and Israel exempts disputes with states that refuse to recognize it and maintain diplomatic relations with it, unless the refusal was caused by the dispute.⁸

⁵ *Case of Certain Norwegian Loans* (France v. Norway), [1957] I. C. J. Rep. 9, 46.

⁶ [1957-1958] I. C. J. Y. B. 211.

⁷ *Id.* at 192-94.

⁸ *Id.* at 200-01.

IV.

THE INTERNATIONAL COURT OF JUSTICE

An important factor in ascertaining the extent, if any, to which the self-judging reservation is now desirable for the United States is the reputation and responsibility of the Court, as disclosed by its 13-year history.

This section of the report is directed towards the manner in which the Court operates and, in particular, the manner in which its Judges have addressed themselves towards disputes between sovereign states. After a preliminary description of the general organization and jurisdiction of the Court, attention will be focused upon the manner in which the Judges are selected, the provisions for compensating them, the men who have served as Judges, and the litigated decisions¹ which the Court has thus far rendered. Brief biographies of the Judges and a chart of their voting records are attached as Appendices B and C.

A. STATISTICAL SUMMARY OF ITS WORK TO DATE

On January 31, 1946, the Judges of the League of Nations' Permanent Court of International Justice resigned their offices.² That court had sat from 1922 to 1940 and handled 65 cases. It had rendered 32 decisions in contentious cases³ and 27 advisory opinions; 12 cases had been withdrawn by the parties.⁴

On February 6, 1946, the United Nations elected 15 Judges to the new Court, and it first sat on April 18, 1946. At least 43 cases had been submitted to it by July 1, 1959. As of that date it had rendered final opinions in 17 contentious cases and 10 advisory opinions. Seven cases had been dismissed without opinion on the jurisdictional ground that the defendant had not submitted to the Court's jurisdiction in any way, and, when requested by the applicant, had refused to submit to the Court's jurisdiction for the purpose of

¹ The 10 advisory opinions of the Court have been omitted so as to concentrate on disputes between sovereigns.

² [1946-1947] I. C. J. Y. B. 27.

³ In some cases decisions were rendered at more than one stage of the case.

⁴ Hudson, *The Permanent Court of International Justice, 1920-1942*, at 779 (1943); Hudson, *The Twenty-Fifth Year of the World Court*, 41 Am. J. Int'l L. 1 (1947).

the particular case. Two cases had been withdrawn by the applicant, and 7 of the 43 cases were still pending.⁵

B. MEMBERSHIP AND GENERAL JURISDICTION

Pursuant to Article 35 of its Statute, the Court is open to all nations that are parties to its Statute. Under Article 93 of the U. N. Charter, all U. N. members are ipso facto parties to its Statute, and non-members of the U. N. may also become parties to the Statute.⁶

Only states may be parties to actions before the Court.⁷ Generally speaking, its jurisdiction is based strictly upon consent. Thus the Court has jurisdiction over any case submitted to it by the parties by a special *ad hoc* agreement or by an agreement embodied in a treaty or convention executed by them.⁸

C. "COMPULSORY" JURISDICTION UNDER THE OPTIONAL CLAUSE

Parties to the Statute may file with the Secretary General a declaration accepting the jurisdiction of the Court with respect to the subject matters specified by the "optional" clause in Article 36. Under Article 36, as we have seen (pages 17, 24 *supra*), such declarations may be conditioned in terms of time or scope, or they may be unconditional. Within their scope, however, and for their term, they grant "compulsory" jurisdiction to the Court to adjudicate any question of international law, the interpretation of a treaty, the existence of any fact which would constitute a breach of an international obligation, or the nature and extent of any reparations due therefor, these being the subject matters listed in Article 36(2) of the Statute. The consensual element remains, however, as it is not necessary for any state to file such a declaration. Moreover, as above

⁵ [1957-1958] I. C. J. Y. B. 52-82; [1958] I. C. J. Rep. *passim*; the *Interhandel* case (preliminary objections), the *Aerial Incident of July 27th, 1955* (Israel v. Bulgaria), and the *Case Concerning Sovereignty Over Certain Frontier Land* (Belgium v. Netherlands) were decided in the first half of 1959.

In the above computation, the numbering system employed in the I. C. J. Yearbook for 1957-58, pages 52-82, has been followed in determining what is a "case". The assessment of damage in the *Corfu Channel* case, listed as "1/A" in the Yearbook, has not been counted as a separate case.

⁶ See Security Council Resolution of October 15, 1946, [1957-1958] I. C. J. Y. B. 35-36. Liechtenstein, San Marino and Switzerland are the non-U. N. members which have become parties. *Id.* at 32-33.

⁷ Stat. Int'l Ct. Just. art. 34, para. 1. The Court may, however, request data and information from international organizations (Art. 34, para. 2), grant advisory opinions to U. N. agencies (Art. 65), and allow intervention by states not parties to an action (Art. 62).

⁸ Stat. Int'l Ct. Just. art. 36, para. 3. The Court also has jurisdiction over questions which by treaty were referable to the predecessor Permanent Court of International Justice.

noted, the declaration, if filed, may be conditional and limited. And regardless of the scope of one state's acceptance of jurisdiction, it cannot be bound except to the extent of the reciprocal jurisdiction accepted by the state bringing an action against it.⁹

As of July 1, 1959, 38 member states' acceptances of the Court's compulsory jurisdiction were in effect.¹⁰ Several of these declarations were carried over from declarations accepting the jurisdiction of the old P. C. I. J. under Article 36(5) of the Statute. The Soviet bloc is conspicuous by its absence.

Whether the failure to obtain more widespread jurisdiction under Article 36 can be traced to the actions of the Court, or results merely from fears about possible future action by the Court, cannot be answered with any certainty, but it is believed that the latter inference is more nearly correct. The cases decided by the Court do not indicate any lack of judicial or judicious discretion by the Court. On the contrary, the Court has seemed quite reluctant to extend its jurisdiction.

D. CONSENTS TO JURISDICTION CONTAINED IN TREATIES

In addition to acceptances of jurisdiction under Article 36(2), consents to the jurisdiction of the Court are contained in a host of treaties which provide for the submission to the Court of certain disputes which may arise in the future.¹¹ As stated by Professor Louis B. Sohn of Harvard¹²:

"... Many bilateral treaties on pacific settlement of international disputes provide for the compulsory jurisdiction of the Court over legal disputes or disputes in which the parties are in conflict as to their respective rights.* Jurisdictional clauses are also contained in hundreds of bilateral and multilateral treaties on practically every subject of international relations; it is usually provided in those treaties that any dispute with respect to the interpretation or the application of the treaty in question should be submitted to the Court.** The United States has included such provisions in

⁹ See page 2 *supra*.

¹⁰ The states which currently have effective declarations of adherence on file with the United Nations Secretariat are as follows: Australia, Belgium, Cambodia, Canada, China, Colombia, Denmark, Dominican Republic, El Salvador, Finland, France, Haiti, Honduras, Israel, Japan, Liberia, Liechtenstein, Luxembourg, Mexico, The Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Philippines, Portugal, The Sudan, Sweden, Switzerland, Thailand, Turkey, Union of South Africa, United Arab Republic, United Kingdom, United States of America, Uruguay.

¹¹ See [1957-1958] I. C. J. Y. B. at 185-86, 214-31.

¹² The following are the footnotes to Professor Sohn's statement:

* More than 200 such treaties are published in the Systematic Survey of Treaties for the Pacific Settlement of International Disputes, 1928-1948 (prepared by L. B. Sohn; United Nations Publication No. 1949, V. 3). These treaties also contain provisions for the submission of non-legal disputes to conciliation or arbitration or both.

** For a list of recent treaties containing such jurisdictional clauses, see International Court of Justice, Yearbook, 1957-1958, pages 215-31.

its recent treaties of friendship, commerce and navigation and, in consequence, any dispute relating to the interpretation or the application of these treaties, without any reservation whatsoever, can be brought before the Court by a unilateral application of either party to the dispute.*

"There are also a few multilateral treaties on pacific settlement of disputes which confer jurisdiction on the Court with respect to broad categories of legal disputes. To this group belong: the two General Acts for the Pacific Settlement of International Disputes, adopted respectively by the Assembly of the League of Nations in 1928 and the General Assembly of the United Nations in 1948;** the American Treaty on Pacific Settlement of 1948 (so-called Pact of Bogota);*** and the European Convention for the Peaceful Settlement of Disputes of 1957.**** All these treaties provide not only for the submission of legal disputes to the Court, but also for the settlement of other disputes through conciliation, arbitration or other means."

It should be pointed out, however, that in many treaties containing such provisions, the United States included a proviso that the consent to jurisdiction was under the same terms and conditions as its acceptance of compulsory jurisdiction under Article 36. In other words, they included by reference the self-judging reservation, as well as the other two reservations. Thus Section 115 (b) 10 of the Economic Cooperation Act of April 3, 1948¹⁸ required that every aid agreement with a foreign country include a provision for the submission to the Court, or other mutually acceptable tribunal, of any claim by an American against that country for compensation for injury resulting from governmental measures affecting his property rights, including any contracts or concessions; but all such provisions include the self-judging reservation because they are under the terms and conditions of the United States' acceptance of the optional clause.¹⁴

Similarly, the United States made the following reservation to the Pact of Bogota:

"1. The United States does not undertake as the complainant State to submit to the International Court of Justice any controversy which is not considered to be properly within the jurisdiction of the Court.

* * * * *

* See, e.g., Article 25 in the Treaty of Friendship, Commerce and Navigation between the United States and the Netherlands, signed at The Hague, March 27, 1956. U. S. Treaties and Other International Acts Series, No. 3942.

** 93 League of Nations Treaty Series, pages 345-63; 71 United Nations Treaty Series, pages 101-127.

*** 30 United Nations Treaty Series, page 55.

**** Council of Europe, European Treaty Series, No. 23.

¹⁸ 62 Stat. 137.

¹⁴ A list of the agreements with the citations, and an explanation of this situation, is found in C. Wilfred Jenks' *Preliminary Report on "The Compulsory Jurisdiction of International Courts and Tribunals,"* Institut de Droit International, 24th Commission (1957).

"3. The acceptance by the United States of the jurisdiction of the International Court of Justice as compulsory *ipso facto* and without special agreement, as provided in this Treaty, is limited by any jurisdictional or other limitations contained in any Declaration deposited by the United States under Article 36, paragraph 4, of the Statute of the Court, and in force at the time of the submission of any case."

The 1958 Conventions on the Law of the Sea contained no provision at all for compulsory Court jurisdiction. Instead, and as a compromise, an optional protocol was adopted which may, but need not, be accepted by nations signing the Conventions.¹⁵

E. ANCILLARY JURISDICTION

Ancillary to the foregoing jurisdiction, the Court is expressly granted jurisdiction to determine whether it has jurisdiction (Art. 36(6)). In addition it has jurisdiction to grant provisional "pre-trial" relief (Art. 41), and to interpret or revise any judgment it has rendered (Arts. 60, 61(1)).

F. LAW TO BE APPLIED

In exercising its jurisdiction, the Statute expressly requires the Court to decide cases in accordance with international law. It must apply international conventions or treaties recognized by the parties; international custom, as evidence of a general practice accepted as law; general principles of law recognized by civilized nations; and, secondarily, decisions of national courts and the writings of learned authors.¹⁶ Pages 45-51, *infra*, discuss the weight given to each category.

G. THE MAKEUP OF THE COURT AND ITS PROCEDURE

The Court consists of 15 Judges (Art. 3). Nine Judges constitute a quorum (Art. 25). In some instances, however, the Court may

¹⁵ 52 Am. J. Int'l L. 830, 862 (1958).

¹⁶ Article 38 of the Statute of the Court provides:

"1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

"a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

"b. international custom, as evidence of a general practice accepted as law;

"c. the general principles of law recognized by civilized nations;

"d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

"2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto."

sit in "chambers" (panels) of three or more Judges rather than en banc (Arts. 26, 29). All questions are to be decided by a majority vote (Art. 55). Hearings are ordinarily public, although the parties or the Court may determine to have private hearings (Art. 46). Pursuant to Article 30 of the Statute, the Court has framed its own rules of procedure. These rules, and the Statute itself, are to a very large extent identical to those of the Permanent Court of International Justice under the League of Nations.¹⁷

Hearings are generally conducted in the continental manner, which is somewhat akin to appellate practice in the United States. Written memorials (briefs) are followed by countermemorials, replies and rejoinders. Thereafter, the advocates for each party make oral arguments. Direct evidence is seldom given. However, when the Court believes it appropriate, expert witnesses have submitted affidavits of fact to the Court. This technique was used in the *Corfu Channel* case,¹⁸ where a major question of fact was involved and the Court requested experts from neutral nations to visit the scene of the incident and to report their findings to the Court. The Court's budget expressly provides for payments to expert witnesses.

H. SELECTION OF JUDGES

Each Judge is elected for a nine-year term of office, and may be re-elected at its expiration (Art. 13).¹⁹ In order to assure continuity, terms of office are "staggered" so that five Judges face a general election each three years (Art. 13). A Judge may not be removed from office except by a unanimous vote of the other Judges that he is no longer qualified (Art. 18). If a Judge dies, resigns or is removed before his term has expired, a special election is held to fill his seat. The Judge who replaces him holds office for the unexpired portion of the term (Art. 15).²⁰

¹⁷ [1957-1958] I. C. J. Y. B. 34.

¹⁸ [1949] I. C. J. Rep. 4.

¹⁹ Since the original organization of the Court, twenty Judgeships have thus far been up for general elections. The incumbent has been re-elected twelve times [1957-1958] I. C. J. Y. B. 13-15. It is not clear whether the incumbent sought re-election in the other eight cases.

²⁰ Thus far four special elections have been held. In 1951 Judge Levi Carneiro (Brazil) replaced Judge Azevedo (Brazil), who had died. In 1953, Judge Kojevnikov (U. S. S. R.) replaced Judge Golunsky (U. S. S. R.) who resigned because of ill health. In 1954, Judge Zafrulla Khan (Pakistan) replaced Judge Rau (India), who had died. In 1957, Judge Wellington Koo (China) replaced Judge Hsu Mo (China), who had died. It will be observed that only in one case was there a change in nationality, and even then the countries in question, though politically at odds, have much in common culturally and geographically.

Candidates for the Court are nominated by the national groups on the Permanent Court of Arbitration (see page 6, *supra*) or, if a nation is not represented there, by specially appointed national groups (Art. 4). Election is by an absolute majority of the votes in both the General Assembly and the Security Council of the United Nations (Arts. 4, 8, 10).²¹ Judges are to be elected without regard for nationality (Art. 2), except that no two Judges may be nationals of the same state (Art. 3). Electors are directed to consider not only the quality of the individual candidates, but also the nature of the Court. Thus the Judges at any given time are to represent the main existing civilizations and legal systems (Art. 9). In cases of deadlocks in the voting, a joint General Assembly-Security Council conference is convened to nominate other candidates for election. If there is still a deadlock, the Court itself is directed to select a Judge or Judges from the list of candidates who have had at least some support in either chamber (Arts. 11, 12).

Each Judge is to be independent. Each must make a "solemn declaration" that he will be conscientious and impartial (Art. 20). None may engage in any other professional, political or administrative function during his term of office (Art. 16).²² None may act as advocate (Art. 17). None may decide any case in which he previously had acted as advocate or national judge (*ibid*). A Judge may, of course, disqualify himself; and the Court will settle any disputes as to whether any Judge should so act (Art. 24). The President (Chief Judge) of the Court, whenever his nation has been a party to an action before the Court, has regularly asked the Vice President to act as President, but no Judge has yet disqualified himself for partiality. The Statute in fact expressly authorizes a Judge to sit on a case to which his nation is a party (Art. 31).

Ad hoc judges may be chosen by one party whenever a national of the other is on the Court, or by both parties if neither has a national on the Court (Art. 31). They are appointed by the parties, but are supposed to be impartial and to sit in equality with the regular Judges (Art. 31). Their votes carry equal weight. They are to be chosen "preferably" from those candidates who have been nominated for regular Judgeships (Art. 31(2)). Thus far, however, 15 *ad hoc* judges have been chosen and only two were taken from

²¹ Parties to the Court's Statute who are not U. N. members may nonetheless participate in the vote in the Assembly. General Assembly Resolution 264 (III), Oct. 8, 1948.

²² The Court has permitted a Judge to serve on a U. N. Committee. He may not, however, act as arbitrator in any dispute which could possibly be appealed to the Court. See [1956-1957] I. C. J. Y. B. 84-85.

that list of candidates.²³ One *ad hoc* judge was, however, subsequently chosen as a regular Judge of the Court. Not unexpectedly, the *ad hoc* judges have thus far almost invariably voted in favor of the nation which appointed them. The one exception seems to have occurred in the *Haya de la Torre* case,²⁴ where Peru's *ad hoc* judge concurred in the decision against Peru.

I. FINANCES AND SALARIES

The Judges receive an annual salary of \$20,000—United States dollars. The President receives an added special allowance of \$4,800 per year and the Vice President receives an added \$30 per day, not to exceed \$3,000 per year, for acting as President. *Ad hoc* judges receive \$35 per day, plus an expense allowance.²⁵ Salaries and allowance are fixed by the General Assembly and may not be decreased during any Judge's term of office (Art. 32(5)).

In addition to salaries, a pension plan has been developed for the Judges.²⁶ As aids to judicial independence, adequate pensions would seem at least as important as salaries. If, after five years of service, a Judge resigns for ill health, or is not re-elected, then he is entitled to receive, when he reaches the age of 60, his average annual salary times his months of service divided by 360 (not in any event to exceed one-third of the Judge's average annual salary). Thus a Judge who served nine years (one full term) at \$20,000 annually would receive a pension of \$6,000 per year—slightly less than one-third of his salary. A pension of not over one-half of the pension the Judge would have received is granted to his widow.

The total I. C. J. budget in 1958 was \$650,000. The following chart summarizes key I. C. J. expenses:

<u>Year</u>	<u>Total Budget (including rent, adminis- trative help, etc.)</u>	<u>Judges' Salaries</u>	<u>Pensions</u>	<u>Travel Allowance</u>
1958.....	\$650,000	\$307,800	\$29,560	\$21,200
1956.....	620,000	307,800	26,200	21,200
1954.....	621,980	307,800	13,850	21,250
1952.....	639,860	307,800	1,750	18,250

²³ [1957-1958] I. C. J. Y. B. 17-22. The cases involved were: *The Corfu Channel*, *Asylum*, *Haya de la Torre*, *Anglo-Iranian Oil*, *Ambatielos*, *Monetary Gold*, *Nottebohm*, *Indian Passage*, *Guardianship*, *Interhandel* and *Aerial Incident of July 27, 1955* (Israel v. Bulgaria).

²⁴ [1951] I. C. J. Rep. 71.

²⁵ General Assembly Resolution 474/V, Dec. 15, 1950, [1950-1951] I. C. J. Y. B. 127-128.

²⁶ [1946-1947] I. C. J. Y. B. 130.

<u>Year</u>	<u>Total Budget (including rent, adminis- trative help, etc.)</u>	<u>Judges' Salaries</u>	<u>Pensions</u>	<u>Travel Allowance</u>
1950.....	\$592,115	\$315,550	\$100	\$13,000
1948.....	690,784	315,095	377	37,358
1946.....	477,724	283,097		33,000

In addition to the above budget, the United Nations in 1957 authorized the Secretary General to spend up to \$24,000 for *ad hoc* judges, \$25,000 for expert witnesses, \$75,000 for maintaining sessions away from The Hague, \$40,000 for maintaining offices for judges not re-elected and \$31,000 for pensions and removal expenses of non-re-elected judges.²⁷ Except for the last two items, which are recurrent in general election years, these figures are typical and voted annually.

J. COMPOSITION

The 14 Judges who currently constitute the Court²⁸ are Mr. Helge Klaestad, President (Norway); Sir Muhammad Zafrulla Khan, Vice President (Pakistan); and J. Basdevant (France), G. H. Hackworth (United States of America), B. Winiarski (Poland), A. H. Badawi (United Arab Republic), E. C. Armand-Ugon (Uruguay), F. I. Kojevnikov (U. S. S. R.), Sir Hersch Lauterpacht (United Kingdom), L. M. Moreno Quintana (Argentina), R. Cordova (Mexico), V. K. Wellington Koo (China), J. Spiropoulos (Greece) and Sir Percy Spender (Australia).

The Court, as originally composed, consisted of Judges Badawi (Egypt), Hsu Mo (China), Read (Canada), Winiarski (Poland), and Zoricic (Yugoslavia) (for three-year terms); De Visscher (Belgium), Fabela (Mexico), Hackworth (United States), Klaestad (Norway) and Krylov (U. S. S. R.) (for six years); and Alvarez (Chile), Azevedo (Brazil), Basdevant (France), Guerrero (El Salvador) and McNair (United Kingdom) (for nine years). Each Judge was elected on an equal basis; the three, six and nine year terms were determined by drawing lots.²⁹

The Court elects two of its members to act as President and Vice President. Each holds office for a three-year term. The Presi-

²⁷ United Nations Resolution 1231 (XII) in [1957-1958] I. C. J. Y. B. 113.

²⁸ The vacancy created by the death last year of Judge Guerrero of El Salvador has not yet been filled.

²⁹ This information and the ensuing chronology are based on [1957-1958] I. C. J. Y. B. 13-15.

dent writes most of the opinions (See Appendix C). Judge Guerrero (El Salvador) was the first President and Judge Basdevant (France) the first Vice President.

In 1949, each of the five Judges who were in office for three-year terms was re-elected for another nine-year term. Judge Basdevant became President and Judge Guerrero became Vice President.

In 1951, Judge Azevedo (Brazil) died. He was replaced by Judge Levi Carneiro (Brazil).

In 1952, the Judges who initially had six-year terms came up for re-election. Judges Hackworth and Klaestad were re-elected. Judges Rau (India), Armand-Ugon (Uruguay) and Golunsky (U. S. S. R.) were elected to replace Judges De Visscher (Belgium), Fabela (Mexico) and Krylov (U. S. S. R.). Judge McNair (United Kingdom) and Judge Guerrero were named as President and Vice President respectively.

In 1953 Judge Kojevnikov (U. S. S. R.) was elected to replace Judge Golunsky (U. S. S. R.), who had been unable to sit because of illness.

In 1954, Judge Zafrulla Khan (Pakistan) replaced Judge Rau (India), who died.

In 1955, the nine-year Judges came up for re-election. Judges Guerrero and Basdevant were re-elected; Judges Quintana (Argentina), Cordova (Mexico) and Lauterpacht (United Kingdom) were elected to replace Judges Alvarez (Chile), Levi Carneiro (Brazil) and Lord McNair (United Kingdom). Judge Hackworth (United States) was made President and Judge Badawi (Egypt) the Vice President.

In 1957, Judge Wellington Koo (China) was elected to replace Judge Hsu Mo (China), who died.

In 1958, Judges Badawi, Wellington Koo and Winiarski were re-elected. Judges Spender (Australia) and Spiropoulos (Greece) were elected to replace Judges Read (Canada) and Zoricic (Yugoslavia). Judge Klaestad (Norway) was named President and Judge Zafrulla Khan (Pakistan) the Vice President.

Brief biographies of the Judges are contained in Appendix B.

It may be noted that the geographic and political complexion of the Court has remained relatively constant over the years. The bench initially included one Judge each from the United States, the

U. S. S. R., the United Kingdom, France and China, and each member of this "Big 5" has always since been represented on the Court. In addition, there have always been one British Commonwealth Judge, one Egyptian, one Scandinavian Judge, two from Eastern Europe, and four from Latin America. Only one major geographical change has occurred. An Indian (and later a Pakistani) Judge took the seat initially held by a Belgian. Of course, the Latin American nations with members on the Court have changed.

K. THE JUDGES AND THE CASES

A detailed breakdown of the Judges' voting records is attached as a chart in Appendix C.

The Judges of the International Court of Justice, like other judges, probably are not without certain predispositions, for they are human, but, as a Court, they have handled the cases submitted to them objectively, and it would certainly not appear correct to say that there has been "party-line" voting.⁸⁰ For example, Judge Basdevant of France voted against his own country in the *Minquiers and Ecréhos* and *Monetary Gold* cases, though in the *Norwegian Louns* case he concluded that Norway had never really intended to urge an argument against France that it seemed clearly to have made. Judge Badawi has generally favored the interests of under-developed nations, yet in the *United States Moroccan Rights* case he voted to uphold broad United States consular jurisdiction in Morocco.

In the *Aerial Incident of July 27, 1955* (Israel v. Bulgaria) Judge Hackworth of the United States voted with the majority of the Court to dismiss Israel's claim, though that judgment would appear to require the dismissal of pending actions brought by the United States and the United Kingdom against Bulgaria. Though Judge Kojevnikov of Russia entered a sole and unexplained dissent to the denial of interim relief against the United States in the *Interhandel* case, when the Court subsequently came to consider the United States' preliminary objections to the Swiss claim, Judge Kojevnikov concurred with the Court in voting to uphold the United States contention that the Swiss had failed to exhaust local remedies. Indeed, while the majority of the Court held that this failure affected only the admissibility of the Swiss application, Judge Kojevnikov went further and said that it was a bar to the jurisdiction of the Court.

⁸⁰ See Samore, *National Origins v. Impartial Decisions: A Study of World Court Holdings*, 34 Chi.-Kent L. Rev. 193 (1956). This article concludes that "the scales of justice at the international level have generally been balanced with as pleasing a degree of impartiality as ever graced an American courthouse." *Id.* at 195. A similar conclusion was reached as to the Permanent Court of International Justice in Hudson, *The Permanent Court of International Justice, 1920-1942*, 354-60. Hudson notes several instances in which Judges voted against their own countries.

Little would be gained from fully discussing at this point all of the cases decided by the Court. It may be profitable, however, to consider the views of the Judges on (A) jurisdictional questions generally and (B) the validity of self-judging domestic jurisdiction reservations.

1. *The Court's Attitude Towards its Jurisdiction.*

The following necessarily brief summary of the Court's attitude towards its jurisdiction, and the exercise thereof, as indicated in its opinions, at least shows that it has not been prone to expand its powers.

In three of the seventeen contentious cases that have come before the Court jurisdiction was not discussed. These were the *Fisheries* case,³¹ the *Asylum* cases³² and the *Rights of United States Nationals in Morocco* case.³³ Judge Lauterpacht later noted that although both parties to the *Morocco* case had the equivalent of the self-judging domestic jurisdiction reservation, neither had raised it as an objection to jurisdiction.³⁴

Several cases have been dismissed at the request of the plaintiff: the *French Nationals in Egypt* case;³⁵ the *Electricité de Beyrouth* case;³⁶ and (in a special context discussed *infra*) the *Rome Gold* case.³⁷

In seven cases actions have been brought in which the plaintiff noted that defendant had not yet submitted to jurisdiction, but invited it to do so. In all of these, the defendants have declined and the cases have been dismissed (two *Treatment in Hungary* cases;³⁸ *Aerial Incidents of September 4, 1954, of March 10, 1953 and of October 7, 1952*;³⁹ and the two *Antarctica* cases).⁴⁰ The first five

³¹ [1951] I. C. J. Rep. 116. The citation of each case referred to more than once in this part of the report is given only in connection with the first reference to it.

³² [1950] I. C. J. Rep. 266 and 395.

³³ [1952] I. C. J. Rep. 176.

³⁴ Concurring opinion in the *Case of Certain Norwegian Loans*, [1957] I. C. J. Rep. 9, 59-60.

³⁵ [1950] I. C. J. Rep. 59.

³⁶ [1954] I. C. J. Rep. 107.

³⁷ [1954] I. C. J. Rep. 19.

³⁸ *U. S. v. Hungary*, [1954] I. C. J. Rep. 99; *U. S. v. U. S. S. R.*, [1954] I. C. J. Rep. 103.

³⁹ [1958] I. C. J. Rep. 158; [1956] I. C. J. Rep. 6; [1956] I. C. J. Rep. 9.

⁴⁰ *U. K. v. Argentina*, [1956] I. C. J. Rep. 12; *U. K. v. Chile*, [1956] I. C. J. Rep. 15.

were brought by the United States against the U. S. S. R. and/or its satellites; the last two were brought by the United Kingdom against two Latin American nations.

Four cases have been brought to the Court by special *ad hoc* agreements between the parties. In the *Corfu Channel* cases,⁴¹ the United Kingdom brought the action in 1947 pursuant to a special United Nations invitation to bring the dispute before the Court. Albania appeared and accepted jurisdiction of the question. It stated that it believed that the United Kingdom had not followed proper procedure in following the United Nations invitation, but it did not object to jurisdiction at that time. It did object later, but the Court held that its appearance and initial acceptance of jurisdiction waived any defects in procedure.

The *Minquiers and Ecrehos*⁴² case also was submitted by special agreement as were the *Case Concerning Sovereignty Over Certain Frontier Land*⁴³ and the *Rome Gold* case. The last of these involved an unusual situation. The United States, United Kingdom and France advised Albania and Italy that they (the Allies) possessed certain gold taken from the Germans in Italy, to which both Italy and Albania had claims. The Allies proposed to give the gold to the United Kingdom in settlement of the *Corfu Channel* judgment against Albania unless Italy and/or Albania brought the matter to the Court for decision. Italy took up the special invitation. Then, even though it was plaintiff, Italy argued that there was no jurisdiction because Albania, a necessary party to the dispute, had not joined in it. The Court agreed. It believed that in this situation the action of a plaintiff in challenging jurisdiction was understandable.

Three cases have involved disputes as to jurisdiction based on treaties. In the *Ambatielos* case⁴⁴ a declaration attached to a 1926 treaty between Greece and the United Kingdom provided that the treaty should not prejudice rights under a prior, 1886, treaty, which in turn required arbitration of disputes arising thereunder. The Court held that the declaration was part of the 1926 treaty. The 1926 non-prejudice clause therefore gave the Court jurisdiction (under the 1886 treaty) to require arbitration of a dispute arising in 1922, before the 1926 treaty was signed. The dispute involved the question whether English courts had denied justice to a Greek national. The Court held

⁴¹ Preliminary Objections, [1947-1948] I. C. J. Rep. 15; Merits, [1949] I. C. J. Rep. 4; Assessment of Compensation, [1949] I. C. J. Rep. 244.

⁴² [1953] I. C. J. Rep. 47.

⁴³ [1959] I. C. J. Rep. 209.

⁴⁴ Preliminary Objection, [1952] I. C. J. Rep. 28; Merits, [1953] I. C. J. Rep. 10.

that this type of dispute was covered by the 1886 treaty. The treaty itself dealt with trade and commerce, but a most-favored nation clause in it was held to read in, by reference, a provision in a later Anglo-Bolivian treaty which did cover access to the courts.

Jurisdiction in the *Anglo-Iranian Oil* case⁴⁵ also turned on treaty interpretation. The Iranian declaration, ratified in 1932, covered, as to treaties, only treaties entered into by Iran thereafter. The United Kingdom argued that a most-favored nations clause in an 1857 treaty between it and Iran allowed the United Kingdom access to the Court, since other Iranian treaties, entered into after 1932, granted such access to other nations. The Court held, however, that the date of the 1857 treaty was controlling, and that since that treaty was not entered into after the Iranian declaration, it was not within the scope of the declaration. The United Kingdom also argued that a 1933 concession contract between Iran and the Anglo-Iranian Oil Company was not only a concession, but, in effect, a treaty, since it was reached in settlement of an international dispute which the United Kingdom had submitted to the League of Nations on behalf of its national. The Court disagreed: The contract was not between nations, did not regulate matters directly concerning the nations, and therefore was not a treaty notwithstanding the United Kingdom's role as "architect" of the concession.

In the *Swedish Guardianship* case⁴⁶ the Court noted that both parties had submitted to its jurisdiction under the optional clause. The Court held that the Hague Convention of 1902 on Guardianship of Infants was not in conflict with a Swedish statute providing for "protective upbringing" for "a child under sixteen who, in the family home, is ill-treated or exposed to serious neglect or any other danger affecting its physical or mental health." The Court therefore held that Swedish action in providing protective upbringing for a Dutch child who had been living in Sweden did not violate the treaty, which required Sweden to recognize a Dutch guardianship which had been established for the child. However, had not the subject matter been covered by a treaty, jurisdiction would probably have been lacking since guardianship is a domestic matter.⁴⁷

Several cases have dealt with other aspects of compulsory jurisdiction. In the *Nottebohm* case,⁴⁸ Guatemala argued that it was not

⁴⁵ Preliminary Objection, [1952] I. C. J. Rep. 93.

⁴⁶ [1958] I. C. J. Rep. 55.

⁴⁷ The concurring opinion of Judge Moreno Quintana noted that as a result of the treaty, "A conversion of private international law into public international law has occurred and this enables the Court to exercise its judicial powers." [1958] I. C. J. Rep. 102, 103.

⁴⁸ [1953] I. C. J. Rep. 111. See also footnote 12, page 45 *infra*.

subject to the jurisdiction of the Court in a case in which the plaintiff's application had been filed one month before its declaration submitting to compulsory jurisdiction had expired, because it had not taken any action in the case before its declaration expired. The Court preliminarily held that jurisdiction irrevocably attached when the plaintiff's claim was validly filed.

In the *Indian Passage* case⁴⁹ the Court held that Portugal's declaration accepting jurisdiction was effective as soon as filed. It upheld jurisdiction over a Portuguese claim brought against India (which also had a valid declaration outstanding) three days after the Portuguese declaration was filed, even though India had not yet been advised thereof by the Secretary-General. The Court also held the Portuguese declaration valid even though it reserved to Portugal the right to exclude any category of disputes from jurisdiction at any time, simply by notifying the Secretary General. The Court stated that this could not be employed retroactively.

Two cases have dealt with the United States' self-judging domestic jurisdiction reservation and its equivalent in France.

In the *Norwegian Loans* case it was held that the declarations of adherence of the parties were conditioned by reciprocity, and that Norway could therefore take advantage of France's self-judging domestic jurisdiction reservation to deny jurisdiction simply by averring that the dispute was, in Norway's opinion, within Norway's domestic jurisdiction.⁵⁰

In the *Interhandel* case, the United States filed four preliminary objections to the jurisdiction of the Court, one of which was based on an invocation of the self-judging domestic jurisdiction reservation. In its opinion concerning interim measures of protection⁵¹ and again in its opinion concerning the preliminary objections,⁵² the majority of the Court (having disposed of the Swiss requests on other grounds) found it unnecessary to consider the assertion by the United States of a unilateral determination of domestic jurisdiction. But in both cases a shifting minority of five discussed the point at length. (See pages 40-42 *infra*).

Several miscellaneous holdings regarding jurisdiction merit brief attention before turning to the *Norwegian Loans* and *Interhandel* cases in more detail.

⁴⁹ [1957] I. C. J. Rep. 125.

⁵⁰ On July 10, 1959, France withdrew the self-judging domestic jurisdiction reservation to her declaration of adherence.

⁵¹ [1957] I. C. J. Rep. 105.

⁵² [1959] I. C. J. Rep. 6.

In the *Corfu Channel* case the Court held that the submission to its jurisdiction of the question whether Albania owed damages to the United Kingdom necessarily put before the Court the question of the amount of damages due.

In the *Anglo-Iranian* case, the Court granted wide preliminary relief to the United Kingdom *pendente lite*. Iran failed to appear at the hearing. After hearing the British request, the Court ruled that it could not find *a priori* that the British claim did not contain an international question of which the Court would have jurisdiction and that this sufficed to empower it to grant interim relief. The Court indicated that the parties (1) should do nothing that would prejudice the *status quo* and (2) should establish a joint board to supervise operation of the oil fields until the Court could reach a decision on the merits. This preliminary relief, without a finding of "probable jurisdiction", seems to be the broadest relief yet ordered by the Court.

In the *Asylum* case, the Court refused to interpret its prior judgment for the parties because their request for "interpretation" raised questions that had not been raised in the initial action or answered in the judgment. The Court did not believe it had the power to decide them as a matter of interpretation.

Permission to intervene was granted to Cuba in the *Haya de la Torre* case,⁶³ and was also discussed, as previously mentioned, in the *Rome Gold* case.

In the *Indian Passage* case the Court declined to hold that exhaustion of diplomatic remedies was essential to jurisdiction where both parties had submitted declarations accepting compulsory jurisdiction. Rather, the Court only assumed *arguendo* that exhaustion was necessary, and then found that exhaustion had occurred.

2. *The Court's Attitude Towards Self-Judging Domestic Jurisdiction Reservations.*

As shown *infra*, at page 52, the Court may not decide questions that are within the domestic jurisdiction of litigant states even though the parties to the dispute may have submitted to the Court's compulsory jurisdiction under Article 36. But under Article 36(6), the Court ordinarily would have jurisdiction to decide whether it has jurisdiction, that is, whether the dispute is "really" a domestic one. Under its self-judging domestic jurisdiction reservation, the United States claims the exclusive right to make that determination. The Court has not yet decided whether such a reservation or a declaration containing one is, as a whole, void for inconsistency with Article 36(6); but in the *Norwegian Loans* and *Interhandel* cases, there was extensive discussion of the problem by some of the Judges.

⁶³ [1951] I. C. J. Rep. 71.

Judge Lauterpacht of England, in a dissenting opinion in the *Interhandel* case (preliminary objections), in which he reaffirmed the views he had expressed in a separate opinion in the *Norwegian Loans* case, took the position that the self-judging reservation is incompatible with Article 36(6) of the Court's Statute and is, therefore, invalid. He would hold not only the reservation, but the entire Declaration of Adherence, invalid on the grounds that the Court cannot undertake to sever the reservation from the balance of the Declaration and that the reservation "deprives the Declaration of Acceptance of the character of a legal instrument, cognizable before a judicial tribunal, expressing rights and obligations." His conclusion was that the United States, never having effectively become a party to the system of the Optional Clause of the Court's Statute, can neither sue nor be sued before the Court under Article 36.

The same conclusion was reached by Judge Spender in his concurring opinion in the *Interhandel* case (preliminary objections).⁵⁴ President Klaestad and Judge Armand-Ugon⁵⁵ also took the position that a self-judging reservation is invalid as contrary to Article 36(6). They, however, concluded that while, in obedience to the Statute, the Court could give no effect to the invocation of the reservation, this did not entail the consequence that the United States' Declaration of Adherence was void *in toto*.⁵⁶ Such a conclusion, they felt, would be contrary to the clear intent of the United States.

Judges Hackworth and Wellington Koo, on the other hand, upheld the validity of the self-judging reservation in their concurrences in the *Interhandel* opinion on interim relief.

Judge Read, in his *Norwegian Loans* dissent, interpreted the self-judging reservation to require that the government invoking it reasonably believe the matter to be within its domestic jurisdiction. Hence, he would not uphold the claim of immunity from jurisdiction when he considered the matter clearly one not essentially within the domestic jurisdiction.

⁵⁴ The position taken by Judges Lauterpacht and Spender would appear to find judicial support in the advisory opinion of the Court in *Reservations to the Genocide Convention*, [1951] I. C. J. Rep. 15. The Court there said that "it is the compatibility of a reservation with the object and purpose of the Convention that must furnish the criterion" of admissibility. A state making and maintaining a reservation incompatible with the object and purpose of a multilateral agreement "cannot be regarded as being a party to the Convention." See Hudson, *The Thirtieth Year of The World Court*, 46 Am. J. Int'l L. 1 (1952).

⁵⁵ Along with *ad hoc* Judge Carry.

⁵⁶ The late Judge Guerrero took a similar position in his dissenting opinion in the *Norwegian Loans* case.

3. *Appraisal*

The decisions of the Court lead us to the conclusion that it has acted with conservatism, and has given reason for more confidence in its judicial standing, scholarship and impartiality than has in fact been generally accorded it by the various nations.

V.

WHAT DISPUTES ARE "WITHIN THE DOMESTIC JURISDICTION"?

A. THE MEANING OF "DOMESTIC JURISDICTION"

The phrase "within the domestic jurisdiction" had often been used before 1945 in arbitration treaties and in the Covenant of the League of Nations as a jurisdictional restriction. Thus Article 15(8) of the Covenant provided, as a limitation upon the jurisdiction of the Council of the League:

"If the dispute between the parties is claimed by one of them and is found by the Council to arise out of a matter which by international law is solely within the domestic jurisdiction of that party, the Council shall so report and shall make no recommendation as to its settlement."¹

The Permanent Court of International Justice considered the meaning of the phrase "within the domestic jurisdiction" in its advisory opinion in the *Tunis and Morocco Nationality Decrees* case, which contains the classical exposition on the topic. The court there stated:

"The words 'solely within the domestic jurisdiction' seem rather to contemplate certain matters, which though they may very closely concern the interests of more than one State, are not, in principle, regulated by international law. As regards such matters, each State is sole judge.

"The question whether a certain matter is or is not solely within the jurisdiction of a State is an essentially relative question; it depends upon the development of international relations . . ."²

The Institute of International Law adopted in 1954 the following provision, based on this advisory opinion, as a definition of the domain reserved to domestic jurisdiction:

"The 'reserved domain' is the domain of State activities where the jurisdiction of the State is not bound by International Law.

"The extent of this domain depends on International Law and varies according to its development."

Thus, as the rules of international law change, so does the extent of matters "within the domestic jurisdiction".³

¹ Cf. U. N. Charter art. 2, para. 7.

² P. C. I. J. ser. B, No. 4 (1923).

³ It should be noted, however, that there are stringent limitations upon the growth of international law and upon any modification of a state's international obligations. See Section C, pages 45-51 *infra*.

B. ARE DISPUTES AS TO IMMIGRATION, TARIFFS AND PANAMA CANAL MATTERS "WITHIN THE DOMESTIC JURISDICTION"?

Special concern has frequently been expressed, at the time the self-judging domestic jurisdiction reservation was adopted by the Senate as well as since, as to whether disputes relating to immigration, tariff, and Panama Canal problems would be held to be "within the domestic jurisdiction". Let us consider these separately.

1. *Immigration*

The immigration laws of the United States have varying effect on nationals of different foreign states, through the imposition of quotas and similar national, racial and political restrictions. Of course these states have an interest in the treatment accorded their nationals, and from this standpoint the matter is not one of solely domestic concern. Nevertheless, international law contains no rules for the regulation of a state's immigration policy. The imposition of restrictions on immigration is an ancient practice of states. The United States has by no means been, and is not, alone in applying nationality quotas as well as other forms of restriction. States have not protested against these practices on the grounds of any international legal obligation, and there is no ground in state practice for the assertion of a rule forbidding such quotas or other restrictions. The authors of leading textbooks and other international jurists are uniform in supporting this conclusion.⁴

In the present state of international law, and apart from any restriction which might be self-imposed by treaty, matters of immigration are thus quite clearly within the domestic jurisdiction of the host state, and we know of no responsible authority on which the Court could base a holding to the contrary.

2. *Tariffs*

So far as we are advised no state has claimed that customary international law restricts the imposition by any state of tariffs or other trade barriers, nor has any international tribunal suggested the existence of such legal restrictions.⁵ American tariffs should therefore be regarded by the Court as within the domestic jurisdiction of the United States. Even if the United States signed trade or tariff agreements with one or more other nations, no state not a party

⁴ *E.g.*, 1 Oppenheim, *International Law* 288-92 (7th ed. Lauterpacht 1948). While believing that, in some degree, the regulation of immigration and tariffs by international agreement may be both desirable and feasible, the author concludes that in "interfering with the free flow of goods and persons States do not act in contravention of International Law." *Id.* at 291.

⁵ *Ibid.*

thereto⁶ could justifiably claim that United States trade and tariff policies had ceased to be within its domestic jurisdiction, and the parties to such agreements should be allowed to invoke such agreements only to the extent expressly specified therein.

3. *Panama Canal*

The Permanent Court of International Justice stated, in the famous *Wimbledon* case,⁷ that an artificial waterway connecting two open seas is not to be deemed subject to an international regime in derogation of the control of the state that built and operates that waterway unless and to the extent that the canal is "permanently dedicated to the use of the whole world". Such dedication is not to be assumed from the construction of the canal alone, but must be accomplished by some positive act of the controlling state, such as the execution of a treaty.

The United States has entered into a treaty with Great Britain—the Hay-Pauncefot Treaty⁸—under the terms of which the United States promises that the Panama Canal is to be "free and open to the vessels of commerce and of war of all nations observing these rules". While it may be argued that the Hay-Pauncefot Treaty grants rights to the nations of the world generally and not merely to Great Britain, the rights so granted are limited to those stated in the Treaty. In this regard, it is important to note that the Hay-Pauncefot Treaty, unlike the Convention of Constantinople concerning the Suez Canal, does not provide that its provisions shall operate "in time of war as in time of peace", and that the Hay-Pauncefot Treaty contains no restrictions as to the protective measures which the United States may take in time of hostility. The practice of the United States, together with the absence of protests of other maritime nations, would appear to have established its rights to take such measures of restriction of the use of the Canal as are necessary to protect itself as well as the Canal from the acts of hostile nations.⁹

One writer has concluded: "The provisions of the Treaty which might extend a right of free passage to enemy ships and which give the Canal a neutralized status must accordingly be considered, *in legal as well as in practical effect*, to have yielded to the realities of the strategic importance of interoceanic canals and of the manner in which modern wars are fought."¹⁰ (Emphasis added).

⁶ Other than under a most-favored nation clause. Cf. *The Ambatielos Case* (Greece v. United Kingdom), [1952] I. C. J. Rep. 28.

⁷ P. C. I. J., ser. A, No. 1, at 28 [1923].

⁸ 32 Stat. 1903, 1 Malloy, *Treaties* 782.

⁹ See Proclamation of 23 May 1917, 40 Stat. 1667.

¹⁰ Baxter, *Passage of Ships Through International Waterways in Time of War*, 31 Brit. Yb. Int'l L. 187, 205 (1954).

C. THE CHANGING MEANING OF "WITHIN THE DOMESTIC JURISDICTION"

From what has been said above (page 42) it is apparent that international law and the areas "within the domestic jurisdiction", may change.

Any state may, of course, incur obligations to other states by treaties, and thus cut down the range of matters within its domestic jurisdiction. The leading case is *Tunis and Morocco Nationality Decrees*.¹¹ There Great Britain objected to French nationality decrees which purported to make British citizens, resident in Tunis and Morocco, French subjects. The parties had agreed that if the Permanent Court held, in an advisory opinion, that the matter was not one of domestic jurisdiction, the dispute would be submitted to arbitral settlement.

The Court first concluded as follows:

"Thus in the present state of international law, questions of nationality are, in the opinion of the Court, in principle within this reserved domain [i.e., within domestic jurisdiction]."¹²

But this did not conclude the question, for Britain alleged that treaties between Britain and France restricted the right of France to determine nationality of residents in French territory. The Court recognized that matters which are, in principle, within domestic jurisdiction may become matters of international legal concern as to states which have undertaken treaty obligations as to these questions:

"For the purpose of the present opinion, it is enough to observe that it may well happen that in a matter which, like that of nationality, is not, in principle, regulated by international law, the right of a State to use its discretion is nevertheless restricted by obligations which it may have undertaken towards other States."

Article 38 of the Statute of the Court provides for the application by the Court, in addition to treaties and conventions, of "international custom, as evidence of a general practice accepted as law." Thus, an

¹¹ P. C. I. J. ser. B, No. 4 (1923).

¹² The *Nottebohm Case* (Liechtenstein v. Guatemala), [1955] I. C. J. Rep. 4, is not to the contrary. In that case a German national resident in Guatemala went to Liechtenstein at the outbreak of World War II and, by obtaining waivers of many legal requirements, including a three year residence requirement, was made a citizen of Liechtenstein in eleven days. Nonetheless Guatemala, to which he returned, subsequently treated him as an enemy alien and seized his property. Liechtenstein brought an action against Guatemala on his behalf. The Court held that whether Nottebohm was a national of Liechtenstein for its municipal purposes was entirely up to Liechtenstein. But the Court felt that whether Nottebohm's ties with Liechtenstein were sufficient to confer on Liechtenstein standing to invoke the Court's jurisdiction on his behalf was a matter the Court could decide, and, after reviewing the facts, it decided against Liechtenstein.

area in which each state had been free to exercise its discretion may become an area regulated by international law if states adopt a general practice which they come to regard as not merely a matter of comity or courtesy but of international obligation. But it is not likely that the growth of customary international law will operate to effect any rapid change in the body of international law as we now know it. The requirements for the creation of new rules of customary international law are strict and, while, just as in the common law, it is not necessary to show that every member of the community (i.e. every state) has recognized a particular practice, significant disparity in practice and express rejection of a particular practice or the legal obligation to follow it, may be sufficient to bar the establishment of a new principle.¹³

It is not likely, especially in view of the reference in the Court's Statute to "general" practice, that the Court will be as strict as was Chief Justice Taft (serving as sole arbitrator of a dispute between Great Britain and Costa Rica) in rejecting an asserted principle of international law on the ground that "it certainly has not been acquiesced in by all the nations of the world which is a condition precedent to considering it a principle of international law."¹⁴ However, a recent authoritative indication of how variations in international practice and a state's timely and explicit indication of its own position may prevent the establishment of a new rule of customary international law is contained in the judgment of the International Court of Justice in the *Asylum* case.¹⁵

Colombia had granted asylum in its embassy in Lima to one who was accused by the Government of Peru of having instigated an abortive revolution. On one view of the case, Colombia's right to grant asylum depended upon whether the alleged crime was a political crime or a "common" crime. Colombia argued that the common practice of states had established a rule of customary international law to the effect that the state granting asylum had the right itself to characterize the nature of the offense.

The Court first examined that practice and concluded that it was too vague to support such an assumption:

"Finally, the Colombian Government has referred to a large number of particular cases in which diplomatic asylum was in fact granted and respected. But it has not shown that the alleged rule of unilateral and definitive qualification was invoked or—if in some cases it was in fact invoked—

¹³ This is not to say, of course, that states may throw off their legal obligation to respect established principles of international law, by announcing that they no longer recognize them.

¹⁴ *Tinoco Arbitration*, 18 Am. J. Int'l L. 147 (1924).

¹⁵ [1950] I. C. J. Rep. 266.

that it was, apart from conventional stipulations, exercised by the States granting asylum as a right appertaining to them and respected by the territorial States as a duty incumbent on them and not merely for reasons of political expediency. The facts brought to the knowledge of the Court disclose so much uncertainty and contradiction, so much fluctuation and discrepancy in the exercise of diplomatic asylum and in the official views expressed on various occasions, there has been so much inconsistency in the rapid succession of conventions on asylum, ratified by some States and rejected by others, and the practice has been so much influenced by considerations of political expediency in the various cases, that it is not possible to discern in all this any constant and uniform usage, accepted as law, with regard to the alleged rule of unilateral and definitive qualification of the offence."¹⁶

But the Court continued that even if such a practice had been clear and uniform as to certain other states, it could not be imposed against Peru because Peru had made clear its rejection of that rule:

"The Court cannot therefore find that the Colombian Government has proved the existence of such a custom. But even if it could be supposed that such a custom existed between certain Latin-American States only, it could not be invoked against Peru which, far from having by its attitude adhered to it, has, on the contrary, repudiated it by refraining from ratifying the Montevideo Conventions of 1933 and 1939, which were the first to include a rule concerning the qualification of the offense in matters of diplomatic asylum."¹⁷

It must be emphasized, however, that a state may consent to the creation of a new rule of customary international law, and thus assume additional obligation under international law, by acquiescence—that is, by failing to protest against the assertion by other states that that rule exists. A recent example of this arose in the *Fisheries* case,¹⁸ in which the Court upheld, against the objection of Great Britain, the practice of Norway of claiming the right to extend its territorial sea from straight base lines connecting points on the coast rather than from the curved and twisting coastline itself. Norway argued that its system of extending its territorial sea from straight base lines had been consistently applied by it, at least from 1869 onwards, and that no other state had opposed that system. Great Britain argued that it had not known of the Norwegian practice and that it had not consented to the Norwegian practice. The Court replied:

"For a period of more than sixty years the United Kingdom Government itself in no way contested [the Norwegian practice] . . .

"As a coastal state on the North Sea, greatly interested in the fisheries in this area, as a maritime power traditionally concerned with the law of the sea and concerned particularly to defend the freedom of the seas, the United Kingdom could not have been ignorant of the decree of 1869 which had at length provoked the request for explanations by the French Govern-

¹⁶ *Id.* at 277.

¹⁷ *Id.* at 277-78.

¹⁸ [1951] I. C. J. Rep. 116.

ment. Nor, knowing of it could it have been under any misapprehension as to the significance of its terms which clearly described it as constituting the application of a system . . .

"The notoriety of the facts, the general toleration of the international community, Great Britain's position in the North Sea, her own interest in the question, and her prolonged abstention would in any case warrant Norway's enforcement of her system against the United Kingdom."¹⁹

But the Court clearly noted that active and timely protests by a state may prevent it from being bound despite a widespread practice by other states. The United Kingdom had argued that, except in the case of bays where justified on historic grounds, straight base lines should not be permitted across bodies of water more than ten miles long. The Court recognized that this ten-mile rule had often been used in national laws, treaties and arbitrations in order to tell an inland bay from an open sea. But the Court held that this practice, though widespread, was not a rule of international law and in any event could not bind Norway, which had always opposed any attempt to apply the ten-mile rule to the Norwegian coast.

The acquiescence of a state to a particular practice may not be deemed to be an acceptance of that practice as a rule of customary international law unless the usage of states is accompanied by the development of a conviction that a particular practice is obligatory or right. In the *Lotus* case,²⁰ Turkey had arrested and convicted the French captain of a French steamer for mismanagement of his ship on the high seas resulting in a crash with a Turkish steamer. France claimed that the practice of nations in abstaining from exercising jurisdiction over foreigners in respect to incidents on the high seas showed a general rule of international law which Turkey had violated. The Permanent Court dismissed the argument with this language:

"Even if the rarity of the judicial decisions to be found among the reported cases were sufficient to prove in point of fact the circumstance alleged by the Agent for the French Government, it would merely show that States had often, in practice, abstained from instituting criminal proceedings, and not that they recognized themselves as being obliged to do so; for only if such abstention were based on their being conscious of having a duty to abstain would it be possible to speak of an international custom."²¹

Thus, it seems that in order to prove international custom evidencing a general practice accepted as law, it is necessary to show that the custom is generally, although not necessarily always, followed; that the state in question has either consented to the practice, or acquiesced in it; that it is followed because it is accepted as an obligation, and not

¹⁹ *Id.* at 138-39.

²⁰ P. C. I. J., ser. A, No. 10 (1927).

²¹ *Id.* at 28.

merely because it is politically more expedient to do so; and that it has been followed for a sufficient length of time with sufficient uniformity that it is not unduly uncertain, contradictory or fluctuating. This is not, of course, to deny that new rules of customary international law are being established from time to time, particularly in respect of new problems when the need for governing legal principle is clear and urgent. A recent example is the rule that sovereignty of a nation extends to the entire airspace above the nation.²² However, as one of the leading international lawyers has observed, "The growth of a new custom is always a slow process, and the character of international society makes it particularly slow in the international sphere."²³

Another example of customary law developing more rapidly relates to the jurisdiction of a nation over the continental shelf appurtenant to that nation. There was no such jurisdiction established in international law before the Truman proclamation of 1945 which asserted such a right on behalf of the United States.²⁴ The Truman proclamation claimed the continental shelf as a matter of right—no state objected to the assertion, and, indeed, several other states claimed similar rights. Thus, after only 12 years, there was sufficient agreement on this right that the international conference on the Law of the Sea at Geneva in 1958²⁵ codified the United States position on the ground that it had since been established in custom. On the other hand, a few nations had unilaterally asserted rights to an even more extensive continental shelf. These claims had been objected to by the United States, among others, and the international conference rejected them on the ground that they had not been established by any international custom of general acceptance.

In addition to treaties and international custom, which are the two principal sources of international law, the Statute of the International Court of Justice²⁶ provides for the application by the Court of "general principles of law recognized by civilized nations" and, "judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

However, the reference to these sources should not be a cause for concern, since the prior practice of international tribunals would indicate that they would not be applied in contradiction to the practice of states but rather as aids to working out particular applications of

²² See Brierly, *The Law of Nations*, 63, 171 (4th ed. 1949).

²³ *Id.* at 62-3.

²⁴ 10 Fed. Reg. 12303 (1945).

²⁵ See Convention on the Continental Shelf, U. N. Doc. A/CONF. 13/L. 55, 52 Am. J. Int'l L. 858 (1958).

²⁶ Art. 38.

already established principles and providing legal solutions in areas where no general practice of states or treaties exist to guide the Court.²⁷

The "general principles of law recognized by civilized nations" have been described as including, though not limited to,

"the principles of private law administered in national courts where these are applicable to international relations. Private law, being in general more developed than international law, has always constituted a sort of reserve store of principles upon which the latter has been in the habit of drawing. Roman law . . . was so drawn upon by the early writers on international law, and the process continues, for the good reason that a principle which is found to be generally accepted by civilized legal systems may fairly be assumed to be so reasonable as to be necessary to the maintenance of justice under any system. Prescription, estoppel, *res judicata*, are examples of such principles."²⁸

Decisions of tribunals are a subsidiary rather than a direct source of international law because in international law precedents are not binding as such,²⁹ though as impartial and reasoned statements of the legal principles applied in actual fact situations by leading jurists they are useful evidence of what the established international law principles are. The function of the writings of publicists as a subsidiary source of international law has been aptly described by Mr. Justice Gray of the United States Supreme Court in the *Paquete Habana*, when he stated, "Such works are resorted to by judicial tribunals, not for the speculations of the authors concerning what the law ought to be, but for trustworthy evidence of what the law really is."³⁰

It must be recognized, of course, that in any given case, there may be room for reasonable disagreement as to whether a particular practice of states has obtained sufficient currency and acceptance to become a binding international obligation as customary law, as to what are "general principles of law, recognized by civilized nations," and as to other questions involved in determining the applicable legal principles. However, in matters where the United States has been sufficiently concerned to make its views known, and has clearly and unambiguously opposed the assertion of new principles of interna-

²⁷ See Oppenheim, *International Law* 28 (7th ed. Lauterpacht 1948): "The Court has seldom found occasion to apply 'general principles of law.' This is for the reason that as a rule conventional and customary International Law have been deemed sufficient to supply the necessary basis of decision." Lauterpacht further indicates that the incorporation of "general principles of law" in the Court's Statute "amounts to an acceptance of what has been called the Grotian view which, while giving due—and, on the whole, decisive—weight to the will of States as the authors of International Law, does not divorce it from legal experience and practice of mankind generally." *Id.* at 29.

²⁸ Brierly, *The Law of Nations* 63-64 (4th ed. 1949).

²⁹ Stat. Int'l Ct. Just. Art. 59.

³⁰ 175 U. S. 677, 700 (1899).

tional law applicable to matters hitherto within states' domestic jurisdiction, the risk of a finding by the International Court that this country is subject to such new principles of international law in derogation of its presently established "domestic jurisdiction" is small indeed.

The most enduring protection against the growth and establishment of principles of international law contrary to this country's best interests does not lie in the procedural protection of a self-judging reservation which permits the United States to withdraw from the jurisdiction of the Court disputes that it regards as not regulated by international law. Such protection lies rather in vigilance in reviewing the implications for the United States of new principles asserted by others, and vigor in opposing those new principles which are inimical to our interests. Moreover, it is important to the United States to have a means of defending established principles of international law against encroachment and debilitation to its disadvantage.⁸¹ Any residual risk of the Court intruding on our domestic jurisdiction by the application of new principles of international law must be weighed against the far greater risk that the weakening of the Court's effectiveness through self-judging reservations will play into the hands of those who seek to undermine the authority of established principles of international law which are of vital importance to this country.

VI.

THE REASONS FOR AND AGAINST WITHDRAWING OR MODIFYING THE SELF-JUDGING ASPECT OF THE DOMESTIC JURISDICTION RESERVATION

A. A REMINDER AS TO THE LIMITED NATURE OF THE PROBLEM

The "optional clause" (Article 36(2)) of the Statute of the Court gives each state that is a party to the Statute the option to accept the compulsory jurisdiction of the Court to the extent prescribed by Article 36(2), or not, as it sees fit. Even if accepted in its entirety, such "compulsory" jurisdiction is, however, carefully limited.

The *first* limitation is that the compulsory jurisdiction of the Court under Article 36, if accepted, is limited to *legal* disputes, concerning only:

"(a) the interpretation of a treaty;

⁸¹ See address of Loftus Becker, Legal Adviser of Department of State on *Just Compensation in Expropriation Cases: Decline and Partial Recovery*, 15 Dept. of State Bull. 784 (1959).

- "(b) any question of international law;
- "(c) the existence of any fact which, if established, would constitute a breach of an international obligation;
- "(d) the nature or extent of the reparation to be made for the breach of an international obligation."¹

Thus, since the Court's "compulsory" jurisdiction is limited to international "legal" disputes, no reservation is necessary to avoid consideration by the Court of political or sociological disputes. The Declaration of Human Rights, for example, is only a "declaration" of aspirations, not a treaty. Since it created no obligations, and made no law, it could not be a proper basis for a claim before the Court.

Nor could the United States Constitution or its laws be the basis for such a claim because they create no *international* law or obligations.²

The *second* limitation specified by Article 36 is that such jurisdiction exists only "in relation to any other State accepting the same obligation." No Iron Curtain country currently accepts the compulsory jurisdiction of the Court under Article 36(2). Thus, at present, the Court has no compulsory jurisdiction under Article 36 over any defendant in a suit brought by any Iron Curtain country.

The *third* limitation is that the Statute itself excludes domestic disputes. In addition to the language quoted above in connection with the first limitation, which excludes disputes concerning domestic matters by clear implication,³ Article 2 of the United Nations Charter, of which the Statute of the Court is an integral part, expressly provides:

"7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter."⁴

¹ Stat. Int'l Ct. Just. art. 36, para. 2.

² See *Treatment of Polish Nationals in Dansig*, P. C. I. J. ser. A/B, No. 44 (1932).

³ See Briggs, *The United States and the International Court of Justice: A Re-examination*, 53 Am. J. Int'l L. 301 (1959). "Article 36(2) serves as a limitation on the jurisdiction of the Court, confining it, in relation to declarations made thereunder, to legal disputes comprised within the categories of international law disputes there listed." *Id.* at 303.

⁴ In its advisory opinion on the *Interpretation of the Peace Treaties With Bulgaria, Hungary, and Roumania* the Court said that "the Court as an organ of the United Nations is bound to observe the provisions of the Charter, including Article 2(7)" [1950] I. C. J. Rep. 65, 70. But see Waldock, *The Plea of Domestic Jurisdiction before International Tribunals*, 31 Brit. Yb. Int'l L. 96 (1954). While Waldock doubts that Article 2(7) is a limitation upon the jurisdiction of the Court, *id.* at 124, he is quite certain that a plea of domestic jurisdiction is available as a defense on the merits whether or not the state employing it has included a reservation of domestic jurisdiction in its declaration of adherence, *id.* at 140. He further concludes that a *self-judging* reservation of domestic jurisdiction probably invalidates the whole declaration. *Id.* at 142.

In any event, our problem has nothing to do with *whether* domestic disputes should be within the Court's jurisdiction. Clearly they are not intended to be; and they should not be. Our problem is limited to whether the United States should continue to reserve to itself the right to judge for itself, after it has become involved in a Court proceeding, whether the dispute is "with regard to matters which are essentially within the domestic jurisdiction of the United States."

The *fourth* limitation is that the United States' Adherence under Article 36 of the Statute restricted the Court's jurisdiction over the United States to disputes "hereafter arising".⁵ Thus, old legal disputes may not be heard.

The *fifth* limitation is that under the United States' Adherence it may now at any time terminate its entire Declaration of Adherence, including its acceptance of jurisdiction, on six months' notice.⁶

Finally, there is a *sixth* factor which, though not a limitation, provides ultimate protection to the United States. Under Articles 27(3) and 94 we would have the veto power when the case went before the Security Council for enforcement.

It might be added that any adverse propaganda value of an errant decision against the United States on a domestic matter would probably be largely offset by the very fact that it was an errant incursion into domestic affairs. Other nations do not want such incursions any more than the United States.

We are now ready to consider the arguments for and against the continuance of the self-judging aspect of the domestic jurisdiction reservation, in the light of the restricted nature of the Court's "compulsory jurisdiction".

⁵ Professor Briggs would prefer that this phrase be omitted. Briggs, *The United States and the International Court of Justice: A Re-examination*, 53 Am. J. Int'l L. 301, 316-17 (1959).

⁶ The various termination provisions of other nations are summarized in Briggs, *op. cit. supra*, at 317-18.

B. THE PRINCIPAL ARGUMENTS FOR AND AGAINST THE
SELF-JUDGING ASPECT OF THE DOMESTIC
JURISDICTION RESERVATION

1. *Arguments For the Self-Judging Aspect of the Domestic Jurisdiction Reservation*

Without endorsing them, underlying arguments that have been or might be advanced in support of the self-judging aspect of the reservation include the following:

a. It is unclear how the Court would decide a close question as to whether a dispute is "essentially" within the domestic jurisdiction of the United States. This is especially true in view of the dependence of the meaning of "domestic" on the development of international law, and, in turn, the uncertainty of international law as to many doubtful questions. (But see Part V, pages 42-51 *supra*.)

b. The United States frequently has a different point of view from most other nations as to what is "essentially" domestic. The difference in outlook between the United States and less developed countries in Asia, Africa and Latin America is frequently sharp. The difference between its outlook and that of Iron Curtain countries is usually fundamental. This cuts both ways (see pages 51 and 55, *infra*).

c. The United States, as a party before the Court is in the hands of 15 Judges, of uncertain quality, 14 of whom reflect other judicial philosophies or systems of law, and might be subject to political pressures. (But see Part IV, pages 25-42 *supra*.)

d. The United States needs some form of "veto" power in order to prevent vital political and economic disputes from being regarded as "legal disputes".

In 1946, both before the Foreign Relations Committee (pages 18-20 *supra*), and on the floor of the Senate (pages 20-22 *supra*), only a few more specific reasons were advanced for such a reservation. The Committee rejected those advanced to it⁷ by recommending no such reservation. As previously shown, the reservation was nonetheless added on the floor of the Senate by adding the words "as determined by the United States." Whatever specific reasons were in the minds of the Senators who voted for it, we suggest that the motivating factor was the fear that, without the reservation, the Court might take

⁷ These included fears that the Court might deal with disputes as to immigration, trade barriers, tariffs, and Panama Canal navigation and tolls, and that there might be an encroachment on domestic jurisdiction by an alleged unwritten growth of international law not recognized by the United States. The uncertain basis for these fears is discussed in Part V, pages 42-51 *supra*.

jurisdiction over, and decide against the United States in, some dispute of vital importance to the United States in spite of the firm and sincere position of the United States that the dispute was essentially domestic. Francis O. Wilcox put it this way:

"What prompted the Senate to adopt the Connally amendment? Very likely the action was prompted by the same feeling that caused the American delegation at San Francisco, and later the Senate, to support the veto in the United Nations Charter. It was prompted, in other words, by a desire to safeguard the vital interests of the United States."⁸

Every good citizen has that desire; the question being considered in this report is whether the self-judging reservation was soundly conceived to that end.

2. Arguments Against the Self-Judging Aspect of the Domestic Jurisdiction Reservation

Many able scholars have severely criticized the reservation ever since it was first under discussion.⁹ It is logically offensive to right-thinking lawyers, jurists, philosophers and statesmen because it violates the age-old precept that no man, no nation, should be the judge in its own case.

There are also practical objections, some of which are:

a. Because of the reciprocal nature of consent to the Court's jurisdiction, the self-judging domestic jurisdiction reservation enables any other party to a suit brought by the United States to determine that the matter is within its domestic jurisdiction and thereby prevent the United States from utilizing the Court. (See pages 2, 39 *supra*.)

Thus, the United States, which has a larger stake in investments abroad and in military bases abroad than any other nation (see pages 59-60 *infra*) has prevented itself from utilizing, in its own behalf, the International Court of Justice. This does not seem to make good sense. It is especially damaging to the United States, at least potentially, with respect to countries which take a far more expansive view of their domestic jurisdiction than does the United States.

b. The reservation served as a precedent for 6 other nations which filed similar reservations (see pages 22-23 *supra*) thereby

⁸ Wilcox, *The United States Accepts Compulsory Jurisdiction*, 40 Am. J. Int'l L. 699, 713 (1946).

⁹ E. g., Preuss, *The International Court of Justice, the Senate, and Matters of Domestic Jurisdiction*, 40 Am. J. Int'l L. 720 (1946); Briggs, *The United States and the International Court of Justice: A Re-examination*, 53 Am. J. Int'l L. 301 (1959).

crippling the Court and very likely causing other nations not to adhere to the "optional clause" at all.

Moreover, as stated by the Secretary-General of the United Nations in the Introduction to his Annual Report for 1956-57, the attitude represented by this type of reservation "may render the whole system of compulsory jurisdiction virtually illusory." The Legal Adviser of the Department of State himself said, on April 26, 1958:

"There can be little doubt that reservations of this type have tended to minimize the number of disputes determined by the Court, particularly in view of the possibility that a state which does not have such a reservation may, when sued by one which does, invoke the doctrine of 'reciprocity.'"¹⁰

c. The reservation, according to at least two of the Judges on the Court, may be held to nullify the entire United States Declaration under Article 36.¹¹ The pros and cons of this have been much discussed.¹²

d. The self-judging reservation has also become the prototype for similar United States reservations in numerous treaties (see pages 45-51 *supra*) thereby not only:

(1) Afflicting our treaty practices with a creeping paralysis, but also

(2) Weakening substantially, by our own precedents, our bargaining power with other nations.

This is exactly opposite to the course recently espoused by Vice-President Nixon (page 62 *infra*).

e. Because of such considerations as those listed above the executive branch of the United States government finds itself in the difficult position of being obliged (*vis-à-vis* the legislative branch) to assert at least the possibility of a determination of domestic jurisdiction as a defense, rather than leaving that determination to the Court, even in cases such as *Interhandel*. As any litigator knows, such a technical defense frequently weakens the position before the Court of the party making the defense and may even decrease its standing before the Court in future cases.

¹⁰ Becker, *Some Political Problems of the Legal Adviser*, [1958] *Proceedings*, American Society of International Law 266, 267.

¹¹ Judges Lauterpacht and Spender; see page 41, *supra*. Two other present Judges, President Klaestad and Judge Armand-Ugon, have concluded that the self-judging reservation is invalid but that, nonetheless, the rest of the Declaration remains in effect.

¹² See pages 40-41, *supra*.

f. In view of the United States veto power, under Articles 27(3) and 94 of the United Nations Charter, over ultimate enforcement by the Security Council, the really vital interests of the United States are protected regardless of any action the Court might take.

VII.

THE POSSIBILITIES NOW OPEN TO THE UNITED STATES WITH RESPECT TO THE DOMESTIC JURISDICTION RESERVATION

In addition to continuing the self-judging reservation in full force, on the one hand, or completely withdrawing it, on the other, many suggestions have been made as to possible means of, in effect, modifying it.¹

Two excellent bar reports in 1958 reviewed some of the possible means of modifying the domestic jurisdiction reservation, or achieving the same effect by other means. These were the Report of the Committee on the Charter of the United Nations of the American Branch of the International Law Association on March 31, 1958 and that of the American Society of International Law on April 26, 1958.

One approach would involve a new United States unilateral declaration, with the consent of the Senate, which would in effect amend the present Declaration by deleting the words "as determined by the United States" and substituting:

1. A declaration that what is "domestic" is to be determined by the Court, but including, for the guidance of the Court, a list of matters which, if not covered by treaty, the United States regards as essentially within the domestic jurisdiction of the United States, presumably limited to matters of importance as to which some Judge might have doubt whether they were domestic or international; *or*

2. A declaration that the United States, while having the power of determination, would not determine a dispute to be domestic unless within certain listed categories; *or*

3. A declaration that what is "domestic" is to be determined by the Court but only on the basis of precedents and authorities in:

a. The United States alone, *or*

b. The United States and specified other countries; *or*

4. A declaration that the United States, while having the power of determination, would not determine a dispute to be

¹ See, generally, Note, *Alternative Reservations to the Compulsory Jurisdiction of the International Court of Justice*, 72 Harv. L. Rev. 749 (1959).

domestic except where (a) its vital interests were involved, or (b) prior United States precedents clearly held the matter to be domestic or not international.

The practical difficulties inherent in preparing a comprehensive list of domestic matters, while possibly not insuperable, are great and apparent. Moreover, omissions from any such list might be held to imply acquiescence in the international character of the matters omitted, and thus be more dangerous than no list at all and a case by case approach by the Court.

A somewhat less advanced suggestion of the same sort, which was defeated in the Senate in 1946, was that the parties to a dispute agree in advance on the applicable principles of international law if not in an existing treaty or convention (see page 19 *supra*). This savored of the nineteenth century system of *ad hoc* arbitration (see pages 5-6 *supra*).

Another approach would involve a treaty-by-treaty acceptance of the Court's jurisdiction by treaties with one or more other nations, more limited in scope than Article 36 but without any self-judging domestic jurisdiction reservation. Such treaties could limit the agreed jurisdiction:

a. To certain types of disputes (*e.g.*, under certain treaties); or

b. To disputes involving only certain other nations (*e.g.*, only the American States, or the NATO powers); or

c. To the hearing of disputes, however limited otherwise, by chambers of the Court (as within limits, permitted by Article 26) consisting, for example, of Judges from the nations which are parties to the dispute and nations with similar legal systems.

The impact of any pertinent most-favored nation clauses must, of course, be considered in weighing the effect and wisdom of any new treaty.

A third approach, suggested by the International Law Association Committee, would be for the General Assembly to adopt a new supplementary protocol to the Statute of the Court permitting states which are parties to the Statute, without special agreement, to recognize as compulsory *ipso facto*, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all disputes relating to the interpretation or application of a treaty or treaties. The protocol would not permit any domestic jurisdiction reservation since by hypothesis only treaty law would be involved.

Since a state in adhering to compulsory jurisdiction under Article 36 is not required to accept the full gamut of Article 36 jurisdiction (see page 24 *supra*), a similar result could be achieved by a limited declaration under Article 36. Thus Professor Louis B. Sohn of Harvard Law School, who has been one of the most productive sources of constructive suggestions of various ways to expand the Court's jurisdiction, has noted the possibility of a declaration accepting the jurisdiction of the Court with respect to all disputes relating to the interpretation and application of treaties concluded after the coming into force of the declaration, unless a treaty itself should exclude the Court's jurisdiction. Under this proposal if a new treaty said nothing with respect to the Court's jurisdiction, and if the other party had accepted similar or broader jurisdictional obligations, the Court could decide any dispute about the interpretation or application of the treaty.

This approach suggested by Professor Sohn is broader than the treaty-by-treaty approach (see page 58 *supra*) and, like that approach, is not only allowable under Article 36(1) and compatible with the provisions of Article 36(2) and (6), but provides a means of progress towards the rule of law. As shown in Part VIII it would not, however, go as far as would the withdrawal of the self-judging reservation in restoring United States leadership in this area.

VIII.

CONCLUSION AND RECOMMENDATION

Self-judging domestic jurisdiction reservations have impaired the effectiveness of the International Court of Justice; and that of the United States has impaired its leadership of the free world. To an extent difficult to determine, but certainly large, self-judging domestic jurisdiction reservations have discouraged additional nations from conferring general jurisdiction on the Court, and have prevented full use of the Court even by those who have done so. The self-judging reservations have also been an excuse and precedent for inclusion of similar reservations in treaties.¹

Because such reservations operate reciprocally, the self-judging reservations prevent nations which employ them from using the Court to protect their own interests abroad.² This cripples the United

¹ See pages 27-29 *supra*.

² Thus, in the *Norwegian Loans* case (France v. Norway), [1957] I. C. J. Rep. 9, Norway succeeded in invoking for herself the self-judging reservation then contained in the French declaration of adherence. As has been noted previously (pages 2, 23 *supra*), on July 10, 1959, the French government withdrew the self-judging reservation theretofore contained in its declaration. (The text of the new French declaration is attached as Appendix D.)

States more than others because its foreign interests are the largest. From a strictly selfish, economic point of view the United States should be doing all it can to strengthen international law and to advance, not discourage, means of enforcing international obligations. It is of major and increasing importance to the United States to improve the means of protecting its international trade and foreign investments by improving the means of resolving international business disputes. A weak World Court impairs international law and hurts all forms of international adjudication.

But the fundamental evil of the United States' self-judging reservation, as distinguished from those of the other nations, is that it has provided an excuse for saying that not even the United States, the leader of the free world, is wholehearted in its support of international judicial processes.

The hope of the world and of humanity lies in ultimate worldwide acceptance of the rule of law, rather than the rule of force, and in taking, as rapidly as practicable, realistic steps towards that goal. If such steps are not taken, inertia, discouragement, and disillusionment will play into the hands of those who oppose the rule of law and seek to destroy us. Every new means of peacefully determining or settling international disputes, and every settlement or determination of an international dispute, helps accumulate the forces of peace. If we allow only the forces of war to accumulate, what hope do we have?

Even though Iron Curtain countries are not yet willing or able to participate effectively in international courts, the other nations of the world should be gaining all possible experience in resolving disputes among themselves. Such experience will some day make it that much easier to find means of settling or determining disputes involving Iron Curtain countries as well.

Withdrawal by the United States of its self-judging domestic jurisdiction reservation would be a major, practical and dramatic step towards the goal of the rule of law among nations. We believe it should be taken unless, in the present state of world affairs, it would expose the United States to too great a risk. We have examined all the possibilities that have come to our attention short of complete withdrawal (see pages 57-59 *supra*), but we have finally concluded, after extensive exchanges of views, that none of them, short of complete withdrawal, would accomplish the main objective of assuring the rest of the world that the United States no longer insists on judging for itself the jurisdiction of the Court; that the United States, in deeds, as well as words, is ready to lead the free world towards the rule of law. A dramatic step is needed, and the worldwide impact of such a step would be great only if unqualified. It is such considerations that

have led President Eisenhower³ and many others⁴ to urge reconsideration of the reservation.

Complete withdrawal of the self-judging reservation would not expose the United States to undue risks. We have already described in detail the limited nature of the compulsory jurisdiction to which the United States would subject itself (pages 51-53 *supra*), and emphasized that all the United States would be relinquishing would be the right to decide for itself whether a dispute is domestic or international. Under the United Nations Charter, the Court has no jurisdiction over domestic disputes. The only issue is whether the United States should continue to insist that it judge for itself what disputes are domestic.

There are very real safeguards against the Court's taking jurisdiction over disputes the United States regards as domestic. *First*, the Court as a whole, as presently constituted, has acted in a highly responsible manner, and has given no indication of being capricious or yielding to pressure (pages 35-42 *supra*). *Second*, since only 5 of the 15 judges are reelected or replaced every 3 years, it would take between 3 and 6 years to change completely the makeup of more than half of the Court, even if, contrary to precedent, no Judges were reelected. This gives the Court continuity and assures for at least a time its present responsible character (pages 33-35 *supra*). *Third*, the United States has the right to withdraw from the Court on 6-months' notice. *Fourth*, restriction of the meaning of "domestic jurisdiction" in international law could only come slowly, and the United States would have a very substantial, even determinative, voice as to any such change affecting it (pages 45-49 *supra*). *Finally*, since the United States has a veto power in the Security Council, no judgment of the Court could be enforced by the Security Council without the consent of the United States.

Compared with the dramatic "lift" that would be given the forces of peace and the rule of law by the United States' withdrawal of its self-judging reservation, the risks involved are small.

When and how the self-judging reservation should be withdrawn. While we believe the self-judging reservation should be withdrawn at the first favorable opportunity, we recognize that its withdrawal

³ State of the Union Address, Jan. 9, 1959, 105 Cong. Rec. 163, 167 (daily), N. Y. Times, Jan. 10, 1959, page 6, col. 1.

⁴ *E.g.*, Speech of Vice-President Nixon to the Academy of Political Science, N. Y. Times, Apr. 14, 1959, page 20, cols. 1-8; Speeches of Attorney General Rogers to the International Law Association, N. Y. Times, Sept. 3, 1958, page 1, col. 3, and to the American Bar Association, N. Y. Times, Aug. 27, 1959, page 34, col. 2; Brownell, *Law in the Settlement of Disputes Between Nations*, 31 Conn. Bar J. 346, 355 (1957).

would have broad international ramifications involving problems beyond our competence. Accordingly, we express no views as to the manner and timing of the withdrawal, except to suggest, not as a *sine qua non*, but as something to consider, the possibility of (1) having all nations with such self-judging reservations withdraw them at the same time, and (2) obtaining as many new adherences as possible to Article 36 of the Statute of the Court to be deposited simultaneously with the withdrawal of the reservations.

Enlargement of the jurisdiction of the International Court of Justice on a treaty-by-treaty basis is a sound supplemental approach. On April 13, 1959, Vice-President Nixon said in New York:

"We should take the initiative in urging that in future agreements provisions be included to the effect: (1) that disputes which may arise as to the interpretation of the agreement should be submitted to the International Court of Justice at the Hague; and (2) that the nations signing the agreement should be bound by the decision of the court in such cases."⁵

We believe that there is now great merit in this type of approach. It is a step-by-step approach which could involve any nation, whether or not it had accepted the Court's compulsory jurisdiction generally. As stated above, we believe that during these years when worldwide effectiveness of international judicial machinery is impossible, the United States and other non-Communist nations should be doing everything possible to gain experience, to develop precedents, and to show the way by the settlement of disputes among themselves pursuant to the rule of law.

To our way of thinking, however, the treaty approach should supplement rather than replace any action taken by the United States with respect to the self-judging domestic jurisdiction reservation. The reservation is the basic manifestation of the lack of effective United States leadership in promoting the peaceful settlement of international disputes; and it is the self-judging reservation itself that should be withdrawn as soon as practicable.

The importance of care in the selection of Judges. One collateral point is of such fundamental importance that we are stating it here. As with any other court, confidence in the International Court of Justice derives from maintaining the highest standards of judicial selection. Judge Hackworth's term expires in 1961 and it behooves the United States to be prepared to see to it that a successor of

⁵ Speech of Vice-President Nixon to the Academy of Political Science, *op. cit. supra*. In the same vein, on May 7, 1959, Mr. Loftus E. Becker, Legal Adviser to the State Department, proposed to the United Nations Committee on Peaceful Uses of Outer Space that the Court be given compulsory jurisdiction of all cases involving claims for damages caused by man-made satellites, the legal question he regarded as of highest priority with respect to the uses of outer space. (N. Y. Times, May 8, 1959, page 10, col. 1.)

equally high reputation be nominated. For the United States to use its influence in support of inferior nominees, of whatever nationality, or to permit its attitude towards the selection of Judges for the Court to be influenced by political considerations would be to weaken, perhaps irreparably, the whole Court structure and concept.

The American Bar Association has consistently advocated acceptance by the United States of broad compulsory jurisdiction of the International Court of Justice under Article 36 of its Statute.

On December 18, 1945, the House of Delegates adopted a resolution urging the Senate and the President to have deposited with the United Nations a declaration broadly "recognizing as compulsory *ipso facto* as to the United States and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes hereafter arising of an international character concerning the matters enumerated in Article 36" of the Statute of the Court.⁶ On the same day the House of Delegates adopted another resolution to the effect that the American Bar Association recommended active consideration of amendments to the United Nations Charter relating particularly, among other things, to "strengthening and extending the compulsory jurisdiction of the Court".⁷

All this was, of course, before the United States submitted to the Court's jurisdiction and before the self-judging domestic jurisdiction reservation. After that reservation had been adopted, it was the subject of extensive consideration by the Association's Assembly and its House of Delegates.⁸ At the meeting of the Assembly in Atlantic City in 1946, a resolution was adopted which provided:

"Now, THEREFORE, BE IT RESOLVED, that the Senate of the United States should reconsider the subject of the Declaration of compulsory jurisdiction, and should eliminate therefrom the right of determination by the United States as to what constitutes matters essentially within the domestic jurisdiction, . . ."⁹

The House of Delegates deferred action on this subject until its mid-year meeting in Chicago in February, 1947.¹⁰ At that time the House of Delegates adopted a somewhat different resolution which expressed "its great satisfaction" that the United States had accepted the Court's jurisdiction, but went on to say that:

"... the Association is of the opinion that the prestige and authority of the Court and the leadership of the United States in behalf of the peaceful

⁶ 70 A. B. A. Reports 113-114 (1945).

⁷ *Id.* at 113.

⁸ 71 A. B. A. Reports 90-91, 101, and 147-48 (1946); 72 *id.* at 81-82 and 376-78 (1947).

⁹ 71 A. B. A. Reports 91 (1946).

¹⁰ *Id.* at 148.

settlement of international disputes require that a further step be taken, through withdrawal of the reservation put in the Declaration by virtue of the Connally Amendment of the Morse Resolution (S. Res. 196), whereby either the United States or an adverse party, rather than the Court, would determine whether a particular dispute between them is excluded from the Court's jurisdiction because of its connection with matters 'essentially within the domestic jurisdiction' of the party so deciding;

"RESOLVED FURTHER, That the Association is of the opinion that the retention of such a condition in the American Declaration, as well as any future reliance on it, would be incompatible with the announced purpose of the United States to join in giving to the Court a broad jurisdiction; and, if followed by other Nations in filing or renewing their Declarations, would mean that the United States had created the precedent for a serious backward step through narrowing and impairing the jurisdiction which many countries have vested in the Court;

"RESOLVED FURTHER, that the Association, for the fulfillment of the objectives which it has strongly urged for many years in behalf of international law and adjudication, now recommends to the Senate and Government of the United States that they reconsider the subject-matter of the Declaration deposited on August 26, 1946, and that the Senate authorize the filing of a further Declaration which shall not contain the reservation or condition to which the foregoing resolutions relate."¹¹

The House of Delegates directed that this action stand as its action on the Assembly's resolution, and subsequently, at the 1947 Annual Meeting of the Association, the Assembly concurred in this action by the House of Delegates.¹²

Since the House of Delegates is thus already firmly on record against the United States' self-judging domestic jurisdiction reservation there is no need for a recommendation of further action by the Section or the Association.

Recommendation. We believe that although we only approve prior action by the Association, this study should be printed and widely distributed. While it simply confirms the soundness of the position heretofore taken by the Assembly, the House of Delegates, and the Association's 1958 Committee on International Law Planning (pages 2-3 *supra*) as well as the consensus of the hundreds of bar leaders who attended the five regional conferences sponsored by the Association's Special Committee on World Peace Through Law (see its Report), it contains in summary form a substantial amount of information which, in view of its current and long range importance, should be made more widely available to the bar, members of Congress, government officials and leaders of public opinion. Broad public education and understanding is indispensable to steps towards peace under law. Accordingly, we recommend and urge that, if this report is deemed satisfactory, the Section seek authority from the Association to publish it and distribute it widely.

¹¹ 72 A. B. A. Reports 378 (1947).

¹² 72 A. B. A. Reports 82 (1947).

The Need for Vision and Firm Steps Forward Towards the Rule of Law. The slowness of progress in the search for the rule of law makes many despair—despair to the point of subconsciously reconciling themselves to the inevitability of the perpetual rule of force among nations. In such despair lies mankind's greatest danger.

No less than in science, the way of progress towards the rule of law is persistent hard work, research, knowledge, experience, consultation, vision, faith, unwillingness to admit total failure, and, as warranted, firm steps forward. Withdrawal by the United States of its self-judging reservation would be such a step. As mentioned above, we recognize that this step would have many implications, and that we are not in a position to appraise all of them. We urge, however, that the self-judging reservation be withdrawn just as soon as our Government deems the time ripe.

Meanwhile, we join Vice-President Nixon in urging that the United States take the initiative in enlarging the compulsory jurisdiction of the International Court of Justice on a treaty-by-treaty basis.

Respectfully submitted,

EUGENE D. BENNETT
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August, 1959

APPENDIX A

BIBLIOGRAPHY

(To December, 1958)

The following Bibliography was prepared by the Library of The Association of the Bar of the City of New York under the supervision of its Librarian, Arthur Charpentier, Esq. It appeared in *THE RECORD*, pages 570-73, December, 1958, and is reprinted here with the permission of Mr. Charpentier.

AMERICAN BAR ASSOCIATION. Com. for peace and law through United Nations. Reports and recommendations to the house of delegates. 1947-52.

Association's assembly deplores Connally amendment. 1946. 32 A. B. A. J. 873-4.

AMERICAN SOCIETY OF INTERNATIONAL LAW. Discussion of a resolution favoring a declaration by the United States government of its acceptance of the jurisdiction of the International Court of Justice. Proceedings. 1946. 125-30.

Report of spec. com. on reference to the International Court of Justice of questions of United Nations competence. Proceedings. 1950. 256-69.

ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK. Resolution urging the government of the United States to accept the compulsory jurisdiction of the International Court of Justice in legal disputes set out in art. 36 of the statute of the court. 1946. Yearbook. 360-1.

Report on the compulsory jurisdiction of the International Court. Jan. 20, 1948.

BERLIA, GEORGES. Jurisprudence des tribunaux internationaux qui concerne leur compétence. Académie de Droit International. Recueil des Cours. 1955. II. 105-54.

BLOOMFIELD, L. P. Law, politics, and international disputes. New York, Carnegie Endowment for International Peace. 1958. 257-316. (International conciliation, no. 516)

BOS, MAARTEN. Les conditions du procès en droit international public. Lugduni Batavorum, Brill. 1957. 344p.

BRIERLY, JAMES LESLIE. The basis of obligation in international law. Oxford, Clarendon Press. 1958. 375p.

- CATUDAL, HONORÉ M. Procedure for accepting the optional clause of the statute of the International Court of Justice. 1946. 40 Am. J. Int'l. L. 634-37.
- THE CORFU CHANNEL CASE: The International Court of Justice bids for expanded jurisdiction (Note). 1948. 58 Yale L. J. 187-94.
- DE VISSCHER, CHARLES. Theory and reality in public international law. Princeton Univ. Press. 1957. 381p.
- EAGLETON, CLYDE. The jurisdiction of the security council over disputes. 1946. 40 Am. J. Int'l. L. 513-4, 516, 529.
- ENGEL, SALO. The compulsory jurisdiction of the International Court of Justice. 1951. 40 Geo. L. J. 41-66.
- FACHIRI, A. P. The permanent Court of International Justice, its constitution, procedure and work. London. 1932. 73, 103.
- FITZMAURICE, G. G. The law and procedure of the International Court of Justice. 1951. 28 Brit. Y. B. Int'l. L. 1-28.
- GILMORE, GRANT. The International Court of Justice. 1946. 55 Yale L. J. 1049-66.
- GOODRICH, LELAND M. The United Nations and domestic jurisdiction. 1949. 3 Int'l. Org. 14-28.
- GREEN, L. C. International Court of Justice. 1951. 4 Int'l. L. Q. 229-39.
- GREEN, L. C. International Court of Justice. 1948. 11 Mod. L. R. 483-7.
- GROSS, ERNEST A. Impact of the United Nations upon domestic jurisdiction. (Dept. of State bull., vol. xviii, no. 452) 1948. 259-67.
- HAGUE, THE. International Court of Justice. Acts and documents concerning the organization of the court. No. 1—.
- HAMBRO, EDVARD. The case law of the International Court: A repertoire of the judgments, advisory opinions and orders of the permanent Court of International Justice and of the International Court of Justice. Leyden, Sijthoff. 1952. 699p.
- HAMBRO, EDVARD. The jurisdiction of the International Court of Justice. 1948. 34 Grotius Soc. 127-40.
- HAMBRO, EDVARD. The jurisdiction of the International Court of Justice. Hague, Acad. Int'l. Law. Recueil des cours, 1950. v. 76, 123-213.
- HAMBRO, EDVARD. Some observations on the compulsory jurisdiction of the International Court of Justice. 1948. 25 Brit. Y.B. Int'l. L. 133-57.

- HONIG, F. The diminishing role of the World Court. 1958. 34 Int'l. Affrs. 184-94.
- HOWELL, JOHN M. The application of the concepts of domestic jurisdiction and aggression in the Suez crisis. International law and the middle east crisis. A symposium. 1957. 4 Tulane Studies in Pol. Sc. 49-61.
- HOWELL, JOHN M. Delimiting domestic jurisdiction. 1957. 10 West. Pol. Q. 512-26.
- HUDSON, MANLEY OTTMER, ed. Cases and other materials on international law. 3d ed. St. Paul, West. 1951. 770p.
- HUDSON, MANLEY OTTMER. Disputes before organs of the United Nations. 1947. Univ. of Ill., Edmund J. James Lects. on Govt., no. 51.
- HUDSON, MANLEY OTTMER. The new International Court of Justice. Report, charter of the United Nations; statute of the International Court; the World Court—the next step. 1945-46. 19 Temp. L. Q. 236-95.
- HUDSON, MANLEY OTTMER.
- The 24th year of the World Court. 1946. 40 Am. J. Int'l. L. 1-52.
- The 27th year of the World Court. 1949. 43 Am. J. Int'l. L. 1-20.
- The 30th year of the World Court. 1952. 46 Am. J. Int'l. L. 1-39.
- The 35th year of the World Court. 1957. 51 Am. J. Int'l. L. 1-17.
- HUDSON, MANLEY OTTMER. The World Court—America's declaration of accepting jurisdiction. 1946. 32 A. B. A. J. 832.
- HYDE, CHARLES CHENEY. The United States accepts the optional clause. 1946. 40 Am. J. Int'l. L. 778-81.
- INTERNATIONAL COURT OF JUSTICE. Acts and documents concerning the organization of the court. Charter of the United Nations, statute and rules of the court and other court documents. Leyden, Sijthoff, 1946. (Series D, No. 1)
- INTERNATIONAL COURT OF JUSTICE. Compulsory jurisdiction; senate subcom. hearings on S. Res. 196, Jly. 11-15, 1946. Washington, Govt. Print. Off. 1946. 160p.
- INTERNATIONAL COURT OF JUSTICE. Jurisdiction of court. Statement by under secty. of state Acheson and statement by Charles Fahy. Dept. of State, Bull. xv (Jly. 28, 1946) 154-61.

- INTERNATIONAL COURT OF JUSTICE. Selected documents relating to drafting of statute. 1946. Confer. ser. 84; Pub. 2491. 167p.
- INTERNATIONAL COURT OF JUSTICE. Yearbooks, 1946-1956. 10 vols.
- INTERNATIONAL COURT OF JUSTICE. Judgments. 1952. 6 Int'l. Org. 623-8.
- JENNINGS, R. Y. Recent cases on "automatic" reservations to the optional clause. 1958. 7 Int'l. & Comp. L. Q. 349-66.
- JESSUP, P. C. Acceptance by the United States of the optional clause of the International Court of Justice. 1945. 39 Am. J. Int'l. L. 745-51.
- JONES, HELEN HART. Domestic jurisdiction—from the covenant to the charter. 1951. 46 Ill. L. R. 219-72.
- Jurisdiction of court—optional clause—article 36 of statute—preliminary objection—condition in declaration providing for exclusion of categories of disputes at any time during validity of declaration—consistency of condition with article 36 of statute—total and partial denunciation—retroactive effect of exclusion. 1958. 52 Am. J. Int'l. L. 326.
- LAWSON, RUTH C. The problem of the compulsory jurisdiction of the World Court. 1952. 46 Am. J. Int'l. L. 219-38.
- LAUTERPACHT, HERSCH. The development of international law by the International Court. London, Stevens. 1958. 408p.
- LISSITZYN, OLIVER JAMES. The International Court of Justice; its role in the maintenance of international peace and security. New York, Carnegie Endowment for Int'l. Peace. 1951. 118p.
- LOEWENSOHN, L. The International Court of Justice, 1945. 61 Scot. L. R. 179-85.
- LYMAN, ALBERT. Suggestions for the enlargement of the jurisdiction of the World Court to include private litigation. 13 J. of D. C. B. A. 335-9.
- MACCHESNEY, BRUNSON. Jurisdiction of the International Court of Justice when plaintiff state reserves jurisdiction over matters essentially within its domestic jurisdiction as understood by itself—whether international law or solely national law involved in gold clauses in international loans. 1957. 51 Am. J. Int'l. L. 777.
- MILLER, F. M. Compulsory jurisdiction of the World Court. 1946 Proceedings. St. Bar of Wisc. 84-93.

- MORSE, WAYNE. Significance of the senate action for international justice through law. 1946. 32 A. B. A. J. 776.
- OPPENHEIM, L. F. L. International law; a treatise. 7th ed. New York, Longmans, Green. 1955. 1 vol.
- PREUSS, LAWRENCE. The International Court of Justice and the problem of compulsory jurisdiction. 1945. 327 Dept. of State Bull. 471-8.
- PREUSS, LAWRENCE. The International Court of Justice, the senate and matters of domestic jurisdiction. 1946. 40 Am. J. Int'l. L. 720-36.
- PREUSS, LAWRENCE. Questions resulting from the Connally amendment. 1946. 32 A. B. A. J. 660.
- Repercussions of the Connally amendment. 1946. 32 A. B. A. J. 669.
- ROLIN, HENRI. The International Court of Justice and domestic jurisdiction. 1954. 8 Int'l. Org. 36-44.
- ROSENNE, SHABTAI. The International Court of Justice; an essay in political and legal theory. Leyden, Sijthoff. 1957. 592p.
- SCHWARZENBERGER, GEORG. International law. Vol. I. International law as applied by international courts and tribunals. 7th ed. London, Stevens. 1949. 681p.
- SINGH, J. B. Domestic jurisdiction and the law of the United Nations. Ann Arbor, Univ. Microfilms. 1954.
- SOHN, LOUIS B. Cases on United Nations law. Brooklyn, Foundation. 1956. 1048p.
- SOHN, LOUIS B. The development of international law; the jurisdiction of the International Court of Justice. 1949. 35 A. B. A. J. 924-5.
- THEVENCEZ, H. La nouvelle Cour Internationale de Justice. 1945. 45 Die Friedens-Worte. 411.
- YEARBOOK OF THE UNITED NATIONS. 1946-1956. 10 vols.
- U. S. CONGRESS. Senate. (79.1) Report on charter by the foreign relations com. Exec. rep. no. 8 Washington, D. C., U. S. Govt. Print. Off. 1946.
- U. S. CONGRESS. Senate. Com. on Foreign Relations. Hearings before a subcom. on S. Res. 196. Washington, D. C., U. S. Govt. Print. Off. 1946.

- U. S. CONGRESS. Senate. Com. on Foreign Relations. (79.2) Rep. No. 1835, International Court of Justice. Washington, D. C., U. S. Govt. Print. Off. 1946.
- U. S. DEPARTMENT OF STATE. Compulsory jurisdiction of the International Court of Justice. (Pub. 3540, Int'l. Org. and Confer. Ser. III, 31) Washington, D. C., U. S. Govt. Print. Off. June, 1949. 21 pages.
- U. S. DEPARTMENT OF STATE. The International Court of Justice; selected documents relating to the drafting of the statute. Washington, U. S. Govt. Print. Off. 1946. 167 pages.
- U. S. LIBRARY OF CONGRESS. Legislative Reference Service. The International Court of Justice. Washington, D. C., U. S. Govt. Print. Off. 1955. 29 pages.
- VERZIJJ, J. H. W. The competence of the International Court of Justice. 1954. 2 Int'l. Rel. (David Davies Memorial Inst. of Int'l. Studies). 39-49.
- WAGNER, WIENCZYSLAW J. Is a compulsory adjudication of International legal disputes possible? 1952. 47 N. W. U. L. R. 21-51.
- WALDOCK, C. H. M. Decline of the optional clause. 1955-56. 32 Brit. Y. B. Int'l. L. 244-87.
- WALDOCK, C. H. M. The plea of domestic jurisdiction before international legal tribunals. 1954. 31 Brit. Y. B. Int'l. L. 96-142.
- WEHLE, LOUIS B. Comparative law's task for the International court. 1950. 99 U. of Pa. L. R. 13-24.
- WILCOX, FRANCIS O. The United States accepts compulsory jurisdiction. 1946. 40 Am. J. Int'l. L. 699-719.
- Withdrawal of Connally amendment as to the World Court is urged. 1948. 34 A. B. A. J. 186, 256.

SUPPLEMENTAL BIBLIOGRAPHY

(To June 1, 1959)

The Librarian of The Association of the Bar of the City of New York, Arthur Charpentier, Esq., has been good enough to have this Supplement prepared to bring the above Bibliography up to date for inclusion in this report.

ALFORD, NEIL H., JR. Fact finding by the world court. 1958. 4 Vill. L. Rev. 37-91.

Alternative reservations to the compulsory jurisdiction of the international court of justice. 1959. 72 Harv. L. Rev. 479-60.

BASTID, SUZANNE. La jurisprudence de la cour internationale de justice. 1951. 1 Recueil des Cours. 575-581.

BECKER, LOFTUS. Some political problems of the legal adviser. 1958. 38 Dept. of State Bull. 832-6.

BRIGGS, HERBERT W. Towards the rule of law? United States refusal to submit to arbitration or conciliation the Interhandel case. 1957. 51 Am. J. Int'l. L. 517-29.

BRIGGS, HERBERT W. United States and the international court of justice: a re-examination. 1959. 53 Am. J. Int'l. L. 301-18.

BROWNELL, HERBERT, JR. Law in the settlement of disputes between nations. 1957. 31 Conn. B. J. 346-56.

CASE OF CERTAIN NORWEGIAN LOANS: France v. Norway: jurisdiction of the international court of justice—effect of reservation of matters essentially within the national jurisdiction as understood by the government of a state. 1958. 1 Tasm. U. L. Rev. 106.

CHENG, BIN. The scope and limits of the advisory jurisdiction of the international court of justice. 1957. 24 Sol. 187, 219, 244.

CLARK, GRENVILLE AND SOHN, LOUIS B. World Peace through world law. Cambridge, Harvard Univ. Press. 1958. 540 pages.

DE VISSCHER, CHARLES. Reflections on the present prospects of international adjudication. 1956. 50 Am. J. Int'l. L. 467-74.

EISENHOWER, DWIGHT D. Address of the President to the Congress. 1959. 40 Dept. State Bull. 115-8.

FITZMAURICE, GERALD. The law and procedure of the International Court of Justice 1951-4: treaty interpretation and other treaty points. 1957. 33 Brit. Y. B. Int'l. L. 203-93.

FRIEDMANN, W. G. Sir Hersch Lauterpacht and the international court. 1959. 45 Va. L. Rev. 407-13.

HAMBRO, EDVARD. The authority of the advisory opinions of the international court of justice. 1954. 3 Int'l. & Comp. L. Q. 2-22.

HOGG, J. F. International court: rules of treaty interpretation. 1959. 43 Minn. L. Rev. 369-441.

HUDSON, MANLEY OTTMER.

The 36th year of the world court. 1958. 52 Am. J. Int'l. L. 1-15.

The 37th year of the world court. 1959. 53 Am. J. Int'l. L. 319-23.

INTERNATIONAL COURT OF JUSTICE. Yearbooks 1956-58. 2 vols.

JACOBY, SIDNEY B. Towards the rule of law? 1958. 52 Am. J. Int'l. L. 107-13.

KERNO, IVAN S. L'organisation des nations unies et la cour internationale de justice. 1951. 1 Recueil des Cours. 507-74.

LIANG, YUEN-LI. Notes on legal questions concerning the United Nations. 1952. 46 Am. J. Int'l. L. 483-503.

MCDONALD, EUGENE J. "Automatic reservations" and the world court. 1958. 47 Geo. L. J. 106-23.

ROGERS, WILLIAM P. International order under law. 1958. 39 Dept. of State Bull. 536-9.

SLOAN, F. BLAINE. Advisory jurisdiction of the international court of justice. 1950. 38 Calif. L. Rev. 830-59.

APPENDIX B

BRIEF BIOGRAPHIES OF THE JUDGES

The following are brief biographical summaries of the twenty-seven Judges who have sat on the International Court of Justice. An asterisk (*) indicates present members of the Court; a dagger (†) indicates the original members. There is currently one vacancy as a result of Judge Guerrero's death in 1958.

† ALEJANDRO ALVAREZ (Chile) was a Judge from 1946, when the Court began, until 1955, when his term expired. Born in 1868, he was 78 years old when he joined the Court. Primarily an academician, Judge Alvarez had previously been a member of the Permanent Court of Arbitration, vice-president of the International Law Association, and a founder of the American Institute of International Law. [1946-1947] I. C. J. Y. B. 43.

* ENRIQUE C. ARMAND-UGON (Uruguay) took office in 1952, at the age of 58. His term expires in 1961. Before election he had been an academician, a delegate to the League of Nations, president of the Uruguayan United Nations delegation and president of Uruguay's High Court of Justice. [1951-1952] I. C. J. Y. B. 19.

† JOSE PHILADELPHO DE BARROE AZEVEDO (Brazil) was elected to the Court in 1946 at the age of 52 and served until his death in 1951. He had been in private practice, a law school dean, an adviser to his government, mayor of Rio de Janeiro, and a judge of the Brazilian Supreme Court. [1946-1947] I. C. J. Y. B. 52.

† * JULES BASDEVANT (France) was elected to the Court in 1946, when he was 69. He was re-elected in 1955. Before election he had been a professor, a governmental legal adviser and a delegate to many international bodies and conferences (including the Washington Committee of Jurists which drafted the I. C. J. Statute); he had served on various League of Nations legal committees and on the Permanent Court of Arbitration. [1946-1947] I. C. J. Y. B. 42. After election he was chosen by his fellow judges as Vice-President (1946-1949) and thereafter as President (1949-1952).

† * ABDEL HAMID BADAWI (Egypt) was elected to the Court in 1946 (at 59) and re-elected in 1949 and 1958. He had been a professor of law and had worked with the Ministries of Justice and Foreign Affairs in Egypt. He was Vice-President of the Court from 1955 to 1958. [1946-1947] I. C. J. Y. B. 50.

LEVI FERNANDO CARNEIRO (Brazil) was elected in 1951 at the age of 69, to replace Judge Azevedo, who had died. He served until 1955, when his term expired. He had previously been a leading academician, a member of parliament, a participant in many Inter-

American conferences, and a member of the Permanent Court of Arbitration. [1951-1952] I. C. J. Y. B. 18.

* ROBERTO CORDOVA (Mexico) was elected in 1955, at the age of 56. He had been an ambassador, a delegate at the Rio and Bogota conferences, the International Labor Conference and the Washington Committee of Jurists, an adviser to the Mexican United Nations delegation, and a member of the International Law Commission (rapporteur in 1951). [1954-1955] I. C. J. Y. B. 17.

† CHARLES DE VISSCHER (Belgium) was elected in 1946, when he was 62. His term expired in 1952. He had been a judge of the Permanent Court of International Justice and of the Permanent Court of Arbitration, a delegate at the San Francisco conference and the Washington Committee of Jurists and a member of many League committees (including the experts' committee to codify international law). [1946-1947] I. C. J. Y. B. 48.

† ISIDRO FABELA (Mexico) was elected to the Court in 1946, at 64, and served until expiration of his term in 1952. He had been a judge of the Permanent Court of Arbitration, president of the Mexican League of Nations delegation, ambassador to France, the United Kingdom and other nations, and a professor of law. [1946-1947] I. C. J. Y. B. 45.

SERGEI ALEXANDROVICH GOLUNSKY (U. S. S. R.) was elected in 1951, at the age of 56, but, due to ill health, he resigned in 1953. He had been assistant prosecutor at the Japanese war trials, had attended the Potsdam, Yalta, Dumbarton Oaks and San Francisco conferences, and had been a law professor. [1951-1952] I. C. J. Y. B. 20.

† JOSE GUSTAVO GUERRERO (El Salvador) was elected to the Court in 1946, at the age of 69, and re-elected in 1955, was chosen as its first President in 1946 and as its Vice-President in 1949 and 1952. He died in 1958. He had previously been President of the Permanent Court of International Justice (1937-1946), its Vice-President (1931-1936), and President of the Assembly of the League of Nations in 1929. [1946-1947] I. C. J. Y. B. 42.

† * GREEN H. HACKWORTH (United States) was elected in 1946, at the age of 63, and re-elected in 1952. He was President of the Court from 1955 to 1958. He had previously been a member of the Permanent Court of Arbitration and a delegate to many international conferences, including Dumbarton Oaks, San Francisco and the Washington Committee of Jurists. [1946-1947] I. C. J. Y. B. 45.

* MUHAMMAD ZAFRULLA KHAN (Pakistan) was elected in 1954, at the age of 61, to fill the seat of Judge Rau. He is the current Vice-President of the Court. Before election he had been Minister

of Foreign Affairs, a judge of the Supreme Court of India (1941-1947), a delegate to the United Nations, and connected with various domestic ministries. [1954-1955] I. C. J. Y. B. 15.

† * HELGE KLAESTAD (Norway), present President of the Court, was elected to the Court in 1946, at the age of 61, and re-elected in 1952. He had been a member of the Permanent Court of Arbitration, rendering many arbitral decisions, and a judge of the Norwegian Supreme Court. [1946-1947] I. C. J. Y. B. 49. He has participated in every case thus far decided by the Court.

* FEODOR IVANOVICH KOJEVNIKOV (U. S. S. R.) was elected in 1953, at the age of 50, to replace Judge Golunsky. He had previously been dean of the Moscow Law School and a member of the International Law Commission in 1952 and 1953. [1953-1954] I. C. J. Y. B. 18.

* V. K. WELLINGTON KOO (China) was elected in 1957, at 69, to fill the vacancy left by Judge Hsu Mo's death. He was re-elected in 1958. He had previously served as a delegate to the League of Nations and the United Nations, had been ambassador to many nations, and had served in numerous domestic offices, including that of Prime Minister. [1956-1957] I. C. J. Y. B. 16.

† SERGEI BORISOVITCH KRYLOV (U. S. S. R.) was elected in 1946, at the age of 58. His term expired in 1952. He had been an academician, a legal adviser to his government, a delegate at Dumbarton Oaks and San Francisco, and a member of the Washington Committee of Jurists. [1946-1947] I. C. J. Y. B. 50.

* HERSCH LAUTERPACHT (United Kingdom) was elected in 1955, at the age of 58. Prior to his election he had been King's Counsel, professor of international law at Cambridge, consultant to the United Nations on codification, and a member of the International Law Commission. [1954-1955] I. C. J. Y. B. 16.

† ARNOLD DUNCAN MCNAIR (United Kingdom) was 61 when elected in 1946. His term expired in 1955. He was President of the Court from 1952 to 1955. He had previously been an academician of note and a member of the International Court of Arbitration. [1946-1947] I. C. J. Y. B. 49.

† HSU MO (China) was elected in 1946, at the age of 53 and re-elected in 1949. He had been an academician, judge and ambassador, and was one of the draftsmen of the Statute of the Court. He died in 1956. [1956-1957] I. C. J. Y. B. 15-16.

* LUCIO MORENO QUINTANA (Argentina) was 57 when elected in 1955. He had been a delegate to the United Nations, a member of

the Permanent Court of Arbitration, an ambassador and an academician. [1954-1955] I. C. J. Y. B. 16.

BENEGAL NARSING RAU (India) was elected in 1951, at the age of 64. He died in 1953. He had been a United Nations delegate, vice-chairman of the International Law Commission, Prime Minister of Kashmir and a judge of the Calcutta High Court. [1951-1952] I. C. J. Y. B. 19.

† JOHN E. READ (Canada) was 58 when elected in 1946. Re-elected in 1949, his second term expired in 1958. He had been a general practitioner, academician and governmental legal adviser, and had attended the Washington Committee of Jurists. [1946-1947] I. C. J. Y. B. 50.

* PERCY SPENDER (Australia) was elected in 1957, at the age of 60. He had been vice-president of the United Nations General Assembly in 1950-1951, ambassador to the United States, a member of Australia's parliament and cabinet, and a private practitioner (KC, KBE, KCVO). [1957-1958] I. C. J. Y. B. 16.

* JEAN SPIROPOULOS (Greece) was 61 when elected in 1957. He had been rapporteur of the General Assembly's Sixth Committee and of the International Law Commission on the Nuremberg Principles, a member of the Permanent Court of Arbitration, a delegate at the Washington Jurists', San Francisco and Paris conferences, director of the legal department of Greece's Ministry of Foreign Affairs and a professor of law. He had been Greece's *ad hoc* Judge in the *Ambatielos* case. [1957-1958] I. C. J. Y. B. 15.

† * BOHDAN WINIARSKI (Poland) was elected in 1946, at the age of 62, and re-elected in 1949 and 1958. He had been an assessor for the Permanent Court of International Justice, a delegate to the League of Nations and to several international conferences, and a professor of law. [1946-1947] I. C. J. Y. B. 46.

† MILOVAN ZORIVIC (Yugoslavia) was 62 when elected in 1946. He was re-elected in 1949. His second term expired in 1958. He had previously been a member of the Permanent Court of Arbitration, a deputy delegate to the United Nations, and a member of the League Governing Commission on the Saar. [1946-1947] I. C. J. Y. B. 47.

OF THE JUDGES

Monetary Gold (19)	US v. Hungary (22)	US v. USSR (23)	US v. Case Slovenia (25)	Antarctica (UK v. Argentina) (26)	Antarctica (UK v. Chile) (27)	US v. USSR (28)	Norwegian Loans (29)	Indian Passage (Preliminary) (32)	Swedish Guardianship (33)	Interhandel (Interim) (34)	Interhandel (Preliminary)	Aerial Incident (Israel v. Bulgaria) (35)	Frontier Land (Belgium v. Netherlands) (38)
*	X	X	A	A	A	A	D	X	X	X	X	X	X
X	X	X	X	X	X	X	D	X	X	X	X	X	X
A	X	X											
C	*	*											
X	X	X	X	*	*	X	*	*	X	C	D/C	X	X
X	X	X	X	X	X	X	X	X	D	X	D	X	X
X	X	X	A	A	A	A	X	X		X			
X	X	X	X	X	X	X	X	D/C	*	C	D/C	*	*
X	X	X	*	X	X	*	C	D/C	C	*	X	C	X
C	X	X	X	X	X	X	D	X		C			
X	X	X	X	X	X	X							
X													
D/C	X	X	X	X	X	X	X	X	X	X	D	C	D
X	X	X	X	X	X	X	X	X	X	X	X	X	X
A	A	A											
	X	X	X	X	X	X	X	D	D	D	D/C	X	X
			X	X	X	X	X	X	C	X	D/C	C	X
			X	X	X	X	X	X	C	C	D/C	D	D
			X	X	X	X	X	X	C	X	D	X	D
			X	X	X	X	X	X	D	X	D/C	X	X
									C		D/C	D	X
									C	D	D	X	D

KEY

X—concur with opinion

C—concur in separate opinion

D—dissent

D/C—dissent in part
concur in part

A—absent

*—wrote majority opinion

APPENDIX D

NEW FRENCH DECLARATION UNDER THE OPTIONAL CLAUSE,
OMITTING THE SELF-JUDGING ASPECT OF ITS
DOMESTIC JURISDICTION RESERVATION

Translation from French

July 10, 1959

"On behalf of the Government of the French Republic, I accept as compulsory *ipso facto* and without special agreement, in relation to other Members of the United Nations which accept the same obligation, that is to say, on condition of reciprocity, the jurisdiction of the Court, in conformity with Article 36, paragraph 2, of the Statute, for a period of three years and thereafter until such time as notice may be given of the termination of this acceptance, in all disputes which may arise in respect of facts or situations subsequent to this declaration, with the exception of:

(1) disputes with regard to which the Parties may have agreed or may agree to have recourse to another method of peaceful settlement;

(2) disputes relating to questions which by international law fall exclusively within the domestic jurisdiction;¹

(3) disputes arising out of any war or international hostilities and disputes arising out of a crisis affecting the national security or out of any measure or action relating thereto;

(4) disputes with any State which, at the date of occurrence of the facts or situation giving rise to the dispute, has not accepted the compulsory jurisdiction of the International Court of Justice for a period at least equal to that specified in this declaration."

(Signed) COUVE DE MURVILLE

¹ The previous French declaration, which was withdrawn on July 10, 1959, reserved "differences relating to matters which are essentially within the national jurisdiction as understood by the Government of the French Republic."

STATEMENT OF LYMAN M. TONDEL, JR., NEW YORK, N.Y., JANUARY 23, 1960

This statement is respectfully submitted in support of Senate Resolution 94 for withdrawal of the self-judging aspect of the U.S. domestic jurisdiction reservation with respect to the International Court of Justice.

This is my individual statement, and I speak only for myself. However, my special interest arises from the fact that I was the chairman of the special committee of the section of international and comparative law of the American Bar Association which prepared a printed report on this subject which was widely distributed in October 1959, and has received wide attention.

I shall not burden the record with repetition of the reasons for withdrawal contained in that report, all of which will undoubtedly be advanced by other supporters of withdrawal. I simply call your attention to the fact that those reasons are summarized on pages 59-65 of the report (or pp. 51-65 for any who wish to go further), and that my correspondence and discussions since the report was completed have served to confirm and strengthen my personal view that the self-judging reservation should be withdrawn.

A copy of the report that is mentioned above was delivered to each Senator last October.

Let there be any confusion on the point. I wish to reemphasize that that report, while approved last August by the American Bar Association's section of international and comparative law and distributed by permission of the association's board of governors, was not submitted to the house of delegates, its policy-making body. This was because the house of delegates had already gone on record in favor of withdrawal of the self-judging reservation in 1947 and had never changed its position.

Furthermore, the special committee which prepared the report, having finished its work, no longer exists, and I therefore now speak only for myself.

There has been for several years a growing belief among leaders of both parties, as well as among the bar and the citizenry at large, that the self-judging reservation should be withdrawn as not only (1) unnecessary, but also, (2), more important, a serious practical and psychological drag on American leadership of the free world. However, I personally have quite naturally watched public attitudes more closely since our committee's report was released, and since that time they have been overwhelmingly favorable to withdrawal.

I have been told that editorial comment on our report, which was widespread, ran about 10 to 1 in favor of withdrawal. Many State and local bar groups are studying the problem and to date I have heard of only one bar group—that in Texas—that has been opposed to withdrawal. With respect to its action I would like to observe that it was taken before the merits began to be so widely discussed, and that I am sure that, to some degree, the attitude of Texans would have to be affected by affection for former Senator Tom Connally.

Almost all of the criticisms of withdrawal that have come to my attention have been from expected sources, and I have been surprised only at their small number. Furthermore, the only adverse editorial which really surprised and disappointed me, that in the Wall Street Journal, was predicated on the erroneous notion that withdrawal of the self-judging reservation would give the International Court of Justice jurisdiction over domestic disputes within the United States. I need not remind you that nothing of the kind is suggested. I would vigorously oppose any such idea. All that is suggested is that the Court, which is in fact barred from domestic disputes anyway, be given the jurisdiction to decide for itself whether or not a given legal dispute involving the United States is domestic or international. If the Court decided that the dispute was domestic it would have no jurisdiction.

In this connection I would like to say that I can understand how in 1946 the Senate might have hesitated to give more powers than absolutely essential to a brand new international Court—even though I myself would then have opposed the self-judging reservation. However, we now have, to reassure us, a history of 13 years of sensible, conservative judicial behavior by the Court. It now deserves greater confidence.

As I stated at the outset, I agree with the reasoning of the report which was distributed in October and see no need for repetition of the reasons for complete withdrawal. However, I hope it might be useful to comment on some of the principal questions that have been asked since the report was distributed:

1. Without the self-judging reservation could the International Court of Justice decide Americans' civil rights claims?

The answer is "No," for at least two reasons. First, such civil rights claims are predicated on pertinent provisions of the Federal, or a State's, constitution or statutes. They, however, create no international law or obligations, and the International Court of Justice Statute permits it to decide only international legal questions. Second, the Declaration of Human Rights was only a "declaration" of aspirations—a sound and proper way to keep goals before mankind; but it created no rights or obligations for anyone. I am opposed to the proposed Covenant on Human Rights for the very reason that it would create international obligations in a field that should be domestic.

We don't keep such matters domestic by the self-judging reservation, but rather by making sure they are not made international as to Americans by its becoming a party to an ill-advised treaty.

2. But would there not be more chance that an irresponsible International Court of Justice would step into the U.S. civil rights field without the protection of our veto power, contained in the self-judging reservation?

We aren't the only nation that is anxious to decide our own domestic legal disputes. It is most unlikely that a majority of any group of judges on the Court would want to get into the domestic legal disputes of any country. The present Court has been careful and conservative in this regard. If the composition and attitudes of the Court should drastically change (and only a third of its members change every 3 years) the United States has the right to withdraw on 6 months' notice.

3. Without the self-judging reservation, couldn't Panama sue the United States for greater rights in the Panama Canal?

It is difficult to argue that no international legal question could be involved. Hence if the United States used the self-judging reservation to defend against such a suit it would probably be much criticized. Nevertheless, by using the self-judging reservation, it could deprive the Court of jurisdiction.

Whether this would be helpful or harmful to the United States is something else again. Use of the self-judging reservation in such a situation would certainly detract from the U.S. assertion of leadership in seeking peace, with freedom, under law. Furthermore, it is my understanding that our legal rights in the Canal Zone are so clear that we have nothing to fear from having any such case decided by the Court. If we did not have the self-judging reservation we could tell complaining Panamanians "Take it to Court if you wish," and thereby take much of the steam out of complaints.

4. Why should the United States drop the self-judging reservation when Iron Curtain countries won't give the Court any jurisdiction at all?

There are two principal reasons why the Iron Curtain attitude makes it all the more important for the United States and friendly Western nations to strive hard to decide all disputes among themselves under law:

(a) One of the best ways of helping to win the cold war for world opinion is to make it unreservedly clear, for all the world to see, that the United States seeks only justice under law; and that it is Russia and Communist China that are unwilling to have their rights and obligations adjudicated by impartial tribunals.

(b) Second only in importance to force of arms in keeping Russia and China from using their military power is the unity of the Western powers. What a striking advance toward such unity it would be if the United States and the other friendly nations were to submit all international legal disputes with each other to the International Court of Justice. If we don't stockpile experience in the peaceful settlement of international disputes with our friends what hope do we have of avoiding war?

5. What good does it do to withdraw the self-judging reservation if the United States retains the veto power in the Security Council which enforces decisions of the International Court of Justice? Isn't it illogical to retain one and not the other?

The two questions are completely separate both politically and psychologically. The veto power in the Security Council would protect the United States against an intolerable final political decision; the self-judging reservation protects the United States only from even submitting an international legal question to an impartial tribunal.

It should also be noted as an important fact that as long as we have the Security Council veto power, the withdrawal of the self-judging reservation involves very slight risk, since the Security Council is the enforcement agency for decisions of the Court.

Another point that deserves emphasis because it has been so much more mentioned in recent months is that, of all nations, the United States should be trying the hardest to strengthen international law, not only in the interest of peace but even from the point of view of its own economic interest. This is so because it has the most citizens and the most investments in other countries. International law to a considerable extent is, and to a much greater extent should be, one of the greatest safeguards of citizens and investments abroad.

In conclusion I would like to return to what seems to me by far the most important aspect of this problem. While recognizing the vital importance of keeping at least a balance of military power vis-a-vis Russia, the historical fact is that vast armaments have usually been used eventually. War has become too devastating not to strive simultaneously with all our might to find ways to solve international disputes. Although Iron Curtain countries are not yet seriously interested in international judicial processes we can be gaining experience with friendly nations in the adjudication of legal disputes with them. We have a Court, with a good record for 13 years, that is trying to develop one way to help avoid wars. It seems to me self-evident, at least after a reasonable amount of study, that the risks involved in withdrawing the self-judging reservation are so slight, and the possible advantages so great that the United States cannot afford to prejudice its leadership of the world forces that favor peace, in freedom, under law by failing to withdraw the reservation.

As "Teddy" Roosevelt said:

"The United States of America has not the option as to whether it will or will not play a great part in the world. It must play a great part. All that it can decide is whether it will play that part well or badly."

I trust that the thoughts expressed in this statement may be of some use and would appreciate its inclusion in the record of the hearing.

STATEMENT OF HAMILTON A. LONG, NEW YORK CITY, JANUARY 23, 1960

1. As a member of the bar of New York, a veteran of the U.S. Armed Forces in both World Wars, and a citizen deeply concerned and active regarding the preservation in their full integrity of man's God-given unalienable rights in America, I am opposed to anything which might endanger the traditional American bulwarks of these rights; and, therefore, I favor retention of the Connally amendment.

2. These traditional American bulwarks consist fundamentally of the man-over-Government philosophy, expressed in the Declaration of Independence, and the Constitution's system of constitutionally limited government which was designed primarily to make that philosophy an enduring success in practice; and the repeal of the Connally amendment would endanger both of these components of traditional Americanism governmentally.

3. Repeal of this amendment would open the door to a clearly foreseeable and endless series of decisions, by the foreign court involved, inimical to the welfare if not the very existence of the unalienable rights of Americans in America and of their subordinate rights as well—decisions which would flout or bypass the philosophy and system mentioned above.

4. It is of the essence of sound precautionary conduct, in dealing with any such basic step in connection with changing in any respect or degree our system of government, that we assume the worst and provide appropriate safeguards against danger to the rights of this generation and of posterity in America; and this requires retention of the Connally amendment because, once repealed and the foreign court possesses the jurisdiction contemplated for it with regard to matters affecting Americans in America, there would be in effect and in practice no effectual limitation on its power of decision—all theoretical contentions to the contrary notwithstanding.

5. This is all the more certain, as time passes, because of the proneness of courts, of judges, to grasp steadily for more and more power, jurisdiction, control—whether by way of outright usurpation of power or by those subtle, gradual, and cumulative steps by which judicial power has from time immemorial finally become oppressive in the various nations of the world, as history teaches. Witness, for instance, the brazen usurpation of power of the Federal judiciary—under the leadership of the U.S. Supreme Court—commencing in 1937, in steadily increasing degree and boldness year by year to date until reaching its present rampart and wholesale character, as proved by my

brochure published in 1957, "Usurpers: Fear of Free Men" (copy sent in mid-1957 to all Members of Congress).

6. To repeal the Connally amendment would, moreover, transfer great power over Americans in America to the judges of the foreign Court in question who are not even under the restriction (morally and legally) of being sworn to support the U.S. Constitution; as are all of the Federal judges who have proved to be usurper judges and therefore oath breakers and anti-Constitution violators of the public trust—along with the Congress in every year since 1933 under the leadership of usurper Presidents Roosevelt, Truman, Eisenhower. (See my above mentioned 1957 study for proof in this regard.)

7. This disastrous experience within America, ever since the mid-1930's, makes it idiotic to expect any less offensive conduct by foreign judges if given power as intended by those who favor repeal of the Connally amendment; and the foreign judges in question would, in addition, have backgrounds devoid of understanding of, or sympathy for, the uniquely American belief man's possessing God-given unalienable rights.

8. It is requested that this statement in favor of retention of the Connally amendment be made a part of your record of hearings, in lieu of a fuller statement of supporting reasons and in lieu of personal appearance which your 10-minute limit would make offensively inadequate.

STATEMENT OF WILLIAM H. MEYER, CONGRESSMAN AT LARGE, VERMONT, JANUARY 27, 1960

Mr. Chairman, I appreciate this opportunity to appear before the Senate Committee on Foreign Relations to express my views in favor of the adoption of Senate Resolution 94, which will eliminate the automatic reservation under which the United States reserved the right to determine unilaterally whether the subject matter of a dispute was essentially within the domestic jurisdiction of the United States. This resolution will help to increase the effectiveness of the International Court of Justice and thereby contribute to securing world peace.

The peoples of the world and their political leaders express a universal desire for peace. Many proposals have been advanced to achieve this end. There is an increasing awareness that one of the most fruitful ways of attaining world peace is by substituting the rule of law for the rule of force.

Actually, this is not a substitution that we seek but an extension of a principle which has permitted modern man to be free and secure in pursuing a good and purposeful life within his own country. Our history illustrates that the establishment and maintenance of the rule of law is a continuing and demanding task. The nature of modern warfare makes it imperative that this concept be universal rather than national.

With the passage of Senate Resolution 94, the United States will enhance the possibility for a worldwide rule of law. We hope that other nations with strong reservation clauses applicable to their treaties will likewise reexamine their policies. While we are aware that our action may have varying effects on other nations, on our part, Mr. Chairman, we should act to adopt Senate Resolution 94 out of sincere dedication to and firm belief in our tradition of the rule of law.

Mr. Chairman, anything that we do to promote international justice is an extension of liberty and freedom rather than a restraint upon the same. The needs of our time cry out for actions that will speak louder than any well meant words.

STATEMENT OF ALFRED J. SCHWEPPE,¹ SEATTLE, WASH., JANUARY 27, 1960

(Past chairman of American Bar Association's committee on peace and law (1949-58); currently chairman of its committee on the Bill of Rights; member of the house of delegates (1948-); past president of the Washington State Bar Association (1954-55); dean of the Law School of the University of Washington (1926-30))

KEEP JUDGMENTS ON DOMESTIC QUESTIONS AT HOME

The proposals now so widely advocated and published to permit the International Court of Justice, "the principal judicial organ of the United Nations"

¹ NOTE.—The statements that follow are solely my views as an individual American citizen, and are not made on behalf of any person or organization other than myself.

(art. 92), commonly called the World Court, to decide whether or not a question before it is a U.S. domestic question deserves the most careful consideration in the present posture of world affairs. It should not be decided—as such decisions have come frequently in the past—in a wave of international emotionalism or enthusiasm. It should be decided solely in terms of what is best for the United States.

The World Court consists of 15 judges, only one of whom is from the United States of America. No two judges may be from the same country. They are elected for 9-year terms by the General Assembly and the Security Council. Nine judges constitute a quorum, though normally the full Court sits, with the majority controlling.

To this World Court the United States has submitted cases involving international disputes and has abided by the Court's decision. However, the Connally reservation retains for the United States the privilege of deciding which matters pertaining to the United States are international and which are domestic. The Senate, when it attached the Connally reservation to the World Court treaty in 1946, obviously felt (by a vote of 51 to 12) that the interests of the United States should not be unreservedly committed to a tribunal made up almost exclusively of foreigners.

This judgment on the part of the Senate seems to me to have been a sound one, and in the period since 1946 there has been no evidence to the contrary. The reservation has not been a deterrent to the use of the World Court on truly international issues. Nations that want to use that Court are free to do so. Nor has it been established that America will use its power unfairly. If the United States cannot be trusted to be fair in this matter, how, from our standpoint, can more trust be reposed in an international tribunal?

The chief result of the reservation has been to retain in American hands jurisdiction over issues that are best decided by Americans.

It must not be overlooked that our own State Department's Publication No. 3972, a paper in the Foreign Affairs policy series, released September 1950, with foreword by President Truman, opened with the words, "There is no longer any real distinction between 'domestic' and 'foreign' affairs." While this to me is a wholly inaccurate statement, still it could be used by the World Court, absent the Connally reservation, to make rulings adverse to us on such vital questions as immigration, tariffs, Panama Canal, and other issues that most of us consider strictly domestic business of the United States.

It is true, perhaps, that resort to the Court on genuine questions of international law does not occur as often as some of us might wish. However, the reason seems to rest largely on the widespread current belief that international problems of consequence should be settled at the diplomatic level by way of summit or comparable conferences, and not at the judicial level. The Suez Canal treaty, for example, might have made a justiciable case for the Court, but instead, the resort was to diplomacy. Certainly, so long as the Communist nations refuse to use the Court, the settlement of great international issues at the judicial level—world peace through world law—is not capable of realization.

Americans may look to their own Constitution to learn why the Connally reservation should be preserved. By relinquishing this reservation we would permit the sovereignty of the United States to be substantially impaired. In effect, we would be giving to an international tribunal, without right of appeal or other redress, power to decide questions arising under the U.S. Constitution that might affect our country, its several States, and each of us in a manner contrary to that contemplated by the Constitution. The Founding Fathers might have welcomed the submission of truly international questions to a world court on a case-by-case basis, or on a treaty-by-treaty basis (as suggested by Vice President Nixon) where the international character of the issue is clear in advance. They certainly never contemplated an unqualified blanket release of sovereignty of the kind that would occur with the withdrawal of the Connally reservation. It is surely open to question whether the Senate should assume such power under the Constitution as it is now written.

We have seen at least one recent example of the way the sovereignty of our Nation might be impaired. The United Nations Charter states that only inter-

national issues shall fall under its jurisdiction. But it is also the accepted view that the decision as to what issues are domestic and what issues are international resides conclusively with the United Nations. Recently, over the protest of France, the General Assembly noted that the relation of that country to the Algerian people was not a domestic question. What reason is there to believe that the World Court might not reach similar conclusions on questions that we regard as domestic?

Back in 1947, organizations such as the house of delegates of the American Bar Association recommended withdrawal of the Connally reservation, which has since been described as a "self-judging" provision. However, the international scene has changed so radically since those honeymoon days of relative harmony that the same association has disapproved of numerous proposed United Nations treaties as impinging improperly on the best interests of the United States. With all of the disillusionments and disappointments in the international field since 1947, there is no reason to believe that the house of delegates today would vote the same. More recently, in 1950, a committee of the section of international law of the association has urged in a published report the withdrawal of the Connally reservation "at the first favorable opportunity." The committee report—which does not represent action of the association—says that "the risks involved are small," but necessarily admits that there are risks. The committee adds that "its withdrawal would have broad international ramifications involving problems beyond our competence. Accordingly, we express no views as to the manner and timing of the withdrawal."

I suggest that the problems will also have broad domestic ramifications. These should be weighted with the most searching discrimination before any action is taken to withdraw the reservation. In my judgment, the time to do so has not arrived.

STATEMENT OF CHARLES S. RHYNE, WASHINGTON, D.C., JANUARY 27, 1960

While I am a past president of the American Bar Association and am currently chairman of the ABA Special Committee on World Peace Through Law, I want to make it clear that I present this statement to the committee in my personal capacity only. I want to emphasize that I have not been authorized to testify officially on behalf of the American Bar Association. However, because of my personal opinion regarding the essential need for adoption of Senate Resolution 94, I felt morally obligated to present this statement of my views.

I sincerely believe that prompt passage of Senate Resolution 94 is necessary so that the people of the world will know that by actions as well as words the United States stands for the rule of law internationally, as well as nationally.

We constantly call upon others to prove by concrete acts and actions that their words espousing peaceful methods of international dispute settlement are not mere propaganda. Adoption of Senate Resolution 94 is action which would demonstrate to the whole world that in espousing the rule of law as a replacement for the rule of force internationally the United States does support by actions the words which our leaders have uttered on this subject.

I am assuming that others will have presented the American Bar Association's resolutions adopted in 1946 and 1947 urging, as does Senate Resolution 94, repeal of the so-called self-judging reservation. I am assuming also that the exhaustive study made by the international and comparative law section of the American Bar Association entitled "Report on the Self-Judging Aspect of the U.S. Domestic Jurisdiction Reservation With Respect to the International Court of Justice," has been already presented at these hearings. I would like, however, to supply to this committee the attached compilation of editorials favoring the action embodied in Senate Resolution 94 as I do not believe this particular compilation has been presented.

Last year the American Bar Association created a special committee on world peace through law to explore the possibilities and potentials of the rule of law in the world community. This committee sought the ideas of more than 6,000 leading lawyers, professors, and judges in 74 nations on whether a world legal order could be achieved and how to accomplish that objective. International law experts were then employed to put these ideas and prior experience with the use of international law, into working papers which were presented to regional meetings of the leading trial lawyers of the 50 States—selected by State bar association presidents—in Boston, Chicago, San Francisco, Dallas, and Charlotte. Out of these meetings came a 17-point program which American lawyers

agreed upon as a plan to move the world toward peaceful, orderly operation under the rule of law. One of the 17 points was that this self-judging reservation should be repealed as recommended by Senate Resolution 94.

The resolutions of the American Bar Association on this subject were adopted in 1946 and 1947 before the committee on world peace through law was created and responsibility for action under the resolutions is that of the committee on peace and law through the United Nations and the international and comparative law section who sponsored them. The special committee's function is educational only but this subject of World Court jurisdiction is naturally one in which much education is needed.

Elimination of the self-judging resolution is certainly a realistic and practical conclusion. The International Court of Justice, often called the World Court, in its 14 years of existence has decided less than one case a year. Compare this with the record of the U.S. Supreme Court. The Supreme Court disposes of more than 1,000 cases a year, hearing oral argument in about 100 of these. Less than 1 case a year for the whole world as against more than 1,000 cases per year for one nation in one court. And these figures are all the more significant when we consider that in the United States we require many more Federal and State courts to carry out the rule of law in our Nation. And other nations which operate under the rule of law likewise require many courts.

Obviously, in their limited use of the World Court the nations of the world are taking only a very minor step toward substituting the orderly processes of law for the rule of threats, terror, and violence internationally. The Court is not looked upon as a major force for tranquilizing international conflicts today. The peoples of the world hardly realize the Court exists. Certain it is that they do not appreciate its potential as an instrument for world peace.

The Suez Canal controversy was almost purely a legal dispute, but there was no great public outcry demanding that the disputing nations "go to court, not to war." The Berlin controversy fairly bristles with legal questions, but the idea of taking those questions to the World Court has not been suggested by the public officials charged with its solution. The England-Iceland fisheries dispute and a large number of the international border disputes that flare up periodically are legal disputes where facts could be found, the law of title applied and a court decision made. But today the availability of the procedures, processes, principles, and institutions of the law court internationally are seldom mentioned and certainly they are little used.

There are many ways of advancing international cooperation and peace but none is more certain to achieve abiding success in the long run than the method of able and dispassionate judicial determination. A judicial determination creates a widespread sense of confidence and trust, for it connotes fairmindedness to all men. Yet, despite almost universal agreement on this, nations have not inclined toward use of the rule of law in the World Court.

The chief reason for the World Court's disuse is the reservation which Senate Resolution 94 would eliminate. This reservation provides that our acceptance of the World Court's compulsory jurisdiction should not apply to: " * * * disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America."

The Court, through its procedures and in its decisions, compares most favorably with the best national courts. The emptiness of the courthouse at The Hague is not, therefore, due to a lack of an adequate and competent court, nor can it be due to a lack of international disputes. Every day the page 1 headlines of newspapers demonstrate the existence of the latter. Nations avoid the World Court not because they really prefer war to resolution of disputes in that Court, but because they lack confidence in their ability to get a decision there, even if they do file a complaint, because of our reservation and similar reservations by the other nations who have copied it.

President Truman, in urging Senate ratification of the United Nations Charter, including the Statute of the International Court of Justice, said:

"When Kansas and Colorado have a quarrel over the water in the Arkansas River they don't call out the National Guard in each State and go to war over it. They bring a suit in the Supreme Court of the United States and abide by the decision. There isn't a reason in the world why we cannot do that internationally."

Kansas would hardly file a complaint against Colorado in the Supreme Court if Colorado could automatically kill the complaint by advising the Court that

Colorado had decided not to allow the Court to pass upon the issue. Yet, this is exactly the kind of thing for which the Senate's reservation provides with respect to World Court jurisdiction. And under the Court's statute this reservation is a two-way street. Any time any other nation is sued by the United States in the World Court all the defendant nation need do is to notify the Court that it considers the complaint to be within its domestic jurisdiction. The Court must then automatically dismiss the complaint. It is obvious that this "boomerang" effect of the Senate's reservation is disastrous to the rule of law internationally. The crippling and blighting effect on the World Court of this reservation is thus abundantly clear.

Under the terms of the United Nations Charter the Court has no jurisdiction over domestic matters. The Court itself must summarily decline jurisdiction over any domestic subject. And no one for one moment has urged, or ever should urge, or could successfully urge, World Court jurisdiction over domestic questions. It is the distrust of the Court implied in the U.S. Senate's words "as determined by the United States of America" which destroys the prestige of, and confidence of others in, that Court. As it tells others that since we reserve that decision to ourselves we do not trust the Court to confine itself to its specified jurisdiction. There is an old maxim that "no man should sit as a judge in his own case." Surely we can trust the Court to decide what is domestic and what is international rather than ourselves sitting as a judge in each case to which we are a party.

We would not think of allowing each defendant in a traffic court case an uncontrollable opinion either to consent to the court's jurisdiction and risk conviction or acquittal, or simply to advise the traffic court that he rejects the court's jurisdiction entirely and go free of all charges without a trial. Obviously, under such an optional situation, with jurisdiction based on consent, traffic courts would have very little business—in fact, the police would hardly waste their time in citing offenders to traffic court. And so it is with the World Court. Today no nation wastes time in taking other nations there. And I stress again that situation exists because of the reservation which Senate Resolution 94 would eliminate.

We are proud that ours is a nation which from its creation until now has operated under the rule of law. We have a great opportunity to lead the whole world toward rule by law and away from rule by force. The Senate can do this by approving Senate Resolution 94 and I earnestly urge that this be done.

(The editorials appended to Mr. Rhyne's statement follow:)

EDITORIAL COMMENTS ON THE U.S.-SELF-JUDGING PROVISION ON WORLD COURT JURISDICTION—JANUARY 1960

Note: This collection has been compiled by the staff of the American Bar Association Special Committee on World Peace Through Law. It is for illustrative purposes only and does not purport to be a complete collection.

[From Newsweek, Jan. 18, 1960]

THE FIFTEEN OLD MEN OF THE HAGUE

"It is my purpose," said President Eisenhower in his state of the Union message, "to intensify our efforts to replace force with a rule of law among nations." He went on to propose that the United States subject itself to the International Court of Justice. This would mean repealing the Connally amendment. What is the World Court? What is the Connally amendment? In this special report from The Hague, Senior Editor Arnaud de Borchgrave examines these questions.

Limousine after limousine swung through the massive iron gates of the Peace Palace at The Hague and crunched briskly up the gravel drive. Out stepped 15 elderly gentlemen from 15 different countries. They were the justices of the International Court of Justice, gathering to listen to hearings on a case known as "Right of Passage Over Indian Territory."

Inside the main courtroom a few moments later, pale sunlight filtered through stained-glass windows as the silver-chained usher announced "La Cour" ("the court"). Everyone present—diplomats, lawyers, students, a few tourists—stood up as the 15 justices, dignified in their black robes and white lace bibs, took their seats, and sank deep into a posture of learned listening. The oldest justice is

Jules Basdevant of France, now 82. Not much younger are Court President Helge Klaestad of Norway, 74, and the U.S. member, Green Hackworth, 77.

Decisions, small and slow: Portugal claimed the right of its citizens to travel between the tiny Portuguese territory of Damão (population: 61,000) on India's west coast, and its even smaller interior enclaves of Dadra and Nagar-Aveli. India had been blocking such passage since 1954.

The case had been on the Court's docket since 1955 and already had droned through such procedural steps as India's "Six Preliminary Objections" and Portugal's "Observations and Submissions in Regard to the Objections." Now the Court was convened and working solely on this case. India's counsel spoke for a week; the Portuguese argued for more weeks. At last, the Court withdrew to deliberate. A decision is expected any day.

Unfortunately, most of the cases brought before the Court these days are of this trivial nature. Yet the World Court was established by the U.N. Charter in 1946 with far more urgent purpose. It was intended as a sister body to the Security Council and the General Assembly. Full of hope and promise, the new Court moved into the magnificent Carnegie-endowed Peace Palace which had been occupied by the prewar Court of International Justice, a League of Nations offshoot. Most of the old Court's procedures, rulings, and precedents—as well as its 350,000-volume law library—were absorbed.

Since then, however, the Court, like its sister bodies, the Security Council and the General Assembly, has suffered heavily at the hands of the cold war. The Soviet Union, although sending a judge, has never shown the slightest intention of submitting itself to the Court's jurisdiction. Meanwhile, the great political issues of the cold war—the Berlin blockade, Korea, Hungary—and even some semilegal issues such as the nationalization of Suez, have passed the World Court by.

The foot-dragger: The Court has also suffered from nationalist suspicions. France, Pakistan, and Britain had each reserved for themselves the decision as to what cases involving themselves the Court may discuss, but the leading foot-dragger has been America. The U.S. Senate, fearing that the Court's charter would empower it to overrule such domestic legislation as the tariff and immigration acts, added a restriction before it would ratify the charter. This restriction, principally sponsored by former Senator Tom Connally of Texas, put this country on record as saying in effect: "We will go to the Court only when we feel like it." And to date, the United States has gone before the World Court only 10 times.

Crippled by this American reservation, the Court has been forced to spend its time on picaresque cases like that of the Portuguese enclaves.

Some typical examples:

Asylum (*Colombia v. Peru*). When Peruvian Socialist leader Haya de la Torre took refuge in the Colombian Embassy in Lima in January 1949, Peru asked the Court for permission to extradite him. The case involving one man ultimately went before the Court three times for interpretative decisions. Before any final ruling had been made, de la Torre had slipped to Europe.

Minquiers and Ecrehos (*Britain v. France*). Two tiny groups of islets off the French coast, which had been disputed since 1666, were claimed by France. The Court ruled that "direct evidence of possession" (held by Britain) outweighed "indirect presumptions based on matters in the Middle Ages."

The Temple (*Cambodia v. Thailand*). An obscure temple perched on the jungle border between those two southeast Asian kingdoms is disputed. Cambodia's claim, now pending before the Court, is that the temple clearly became Cambodian by the terms of an equally obscure Franco-Siamese treaty in 1907.

In the long run the Court's thoroughness and objectivity in every case, however small, have made a strongly favorable impression in the United States. Last year, Vice President Nixon suggested that the Court might be made the arbiter of any disputes arising from future U.S. agreements with the Soviets. The American Bar Association last August strongly urged wider use of the Court, pointing out that with increasing American investment abroad—much of it in areas where arbitrary nationalization could happen—a court in which to sue for compensation is a must for American businessmen.

But it is humanity's overriding self-interest which dictates increased U.S. interest in the World Court. As Nixon put it: "If this sword of annihilation is ever to be removed from its precarious balance over the head of all mankind, some more positive courses of action than massive military deterrence somehow must be found."

Too strong or too weak: Despite all this, repeal of the Connally amendment faces tough sledding in the U.S. Senate. A resolution to repeal the amendment, offered last year by Senator Hubert Humphrey, died ingloriously in committee. There is strong opposition from the Senate's conservative southerners; some fear that under liberalized World Court jurisdiction, the U.S. racial question may one day turn up on the Court's docket. One opponent, Senator Karl Mundt of South Dakota, worries that the Court will move into fields like America's restrictive immigration policies.

In answering these arguments no international lawyer maintains today that the basic international differences between the West and communism can be submitted to the World Court. Yet many hope that, in time, the Soviet Union will come to recognize law as the only real alternative to war. To these optimists, it now seems imperative that the United States demonstrate a similar trust.

All the drama and complexity of clashing ideologies and emerging peoples, all the potential excitement and danger of nations probing into space, may sound like too much for 15 elderly gentlemen working serenely away in one of the quietest towns in Europe. Yet the Court at least is a place to make a start along the road to the worldwide rule of law. It was this that Mr. Eisenhower had in mind when he spoke to Congress and asked that the United States now accept decisions of the World Court as the law of the land.

[From the Louisville (Ky.) Courier-Journal, Oct. 14, 1959]

BROADER POWER FOR THE WORLD COURT

One of the first chores of the next session of Congress should be a reconsideration of the Connally reservation to our full participation in the International Court of Justice. Another recommendation to this effect comes from the section on international law of the American Bar Association.

The reservation, which in effect gives this country a veto right over any suit brought against it in the World Court, was the work of the late Senator Connally of Texas. It embodied the lingering isolationism that had colored our original attitude to the first World Court and rallied the die-hards of both parties to its support. Its retention has, according to the bar association group, damaged American economic interests abroad and, of greater importance, "impaired the U.S. leadership of the free world."

Several members of this administration have called for repeal of the Connally reservation. But a repeal proposal has not yet been formally embodied in a legislative measure. President Eisenhower should use all his prestige to push such a measure through his last congressional session. Its passage would be a tangible tribute to the effort he has made to remove the old isolationist stigma from his party. And it would give a new impetus to the effort to make the Court a more forceful arm of international justice.

[From Life magazine, Oct. 26, 1959]

STRENGTHEN THIS WEAK COURT

"It has provided an excuse for saying that not even the United States, the leader of the free world, is wholehearted in its support of international judicial processes." Thus a special committee of the American Bar Association describes the 1946 Connally amendment. Its report reiterates the ABA's demand for repeal of this major roadblock in the advancement of world law.

The Connally amendment limits the terms of our adherence to the World Court by insisting that the United States alone can determine what happens to be "within its domestic jurisdiction." In effect, it serves notice on the world that we do not trust the Court to limit its own jurisdiction to international affairs.

Last March, when Democratic Senator Humphrey introduced a bill in the Senate to repeal this legal chauvinism, both the President and the Secretary of State endorsed it. So did the bar. Its support is about as nonpartisan as any bill could possibly have. Nevertheless, it died in committee. We urge the Senate to make its passage a prime priority when it reconvenes in January.

"From a strictly selfish economic point of view," says the ABA report, "the United States should be doing all it can to strengthen international law and to advance, not discourage, means of enforcing international obligations." Amen.

[From the Denver (Colo.) Post, Oct. 18, 1959]

FRAILTY OF WORLD LAW HURTS UNITED STATES

A special committee of the American Bar Association, headed by Lyman F. Tondel, Jr., of New York, has added its voice to those which have been demanding that the United States exert leadership to turn the International Court of Justice, sometimes known as the World Court, into an effective agency for settling disputes between countries according to rules of law.

The International Court has headquarters at The Hague. It is an agency of the United Nations. It has 15 distinguished judges who are paid \$20,000 a year each. It has everything except cases to hear and decide. In 13 years it has decided only 10 suits.

Why?

The answer is that the United States, Britain and most of the other free world states, as well as all the Communist states, have virtually boycotted the Court.

Of the 80-odd members of the U.N., approximately 50, including the Communist countries, have taken the position that they will not recognize the compulsory jurisdiction of the Court in any cases affecting them.

Of the countries willing to concede some compulsory jurisdiction to the Court, 18, including the United States, have so qualified their acceptance of the Court's authority as to rob it of any real effectiveness.

For example, in 1946, when this country agreed to accept the jurisdiction of the Court, except in matters of domestic jurisdiction, the Senate adopted the Connally amendment under which we reserve the right to decide for ourselves when issues are "domestic" in nature.

In other words, if we are sued in the International Court and do not want to go to trial, we can always say, "This is a domestic matter," and refuse to appear.

Obviously, a system of law, local, national, or international, cannot amount to much if parties to suits can decide for themselves whether they want to submit to a court.

After a lengthy study, the Tondel committee has found that the adoption of the Connally reservation by the United States has encouraged other countries to refuse to agree to give the International Court compulsory jurisdiction.

Thus, we have hurt the ability of the Court to develop into a strong agency for the settlement of controversies by peaceful means, although the establishment of such an agency is indispensable if disarmament is ever to succeed.

Because the foreign interests of the United States, including business interests, are larger than those of any other country, we would gain the most from the creation of an effective court system to deal with international disputes, the committee points out.

Viewed in this light, the repeal of the Connally amendment becomes a matter of self-interest which we should be smart enough to recognize.

[From the Youngstown (Ohio) Vindicator, Oct. 24, 1959]

MORE POWER FOR WORLD COURT

Recently a special committee of the American Bar Association called upon Congress to discard the Connally reservation by which the United States can veto the World Court's jurisdiction over American cases.

The Connally amendment, in essence, provides that the United States alone shall decide whether issues brought before the Court "are essentially within the domestic jurisdiction of the United States." This provision is simply a loophole for escaping compulsory jurisdiction of the Court. Since other nations tend to follow American precedent, the Connally amendment must be regarded as a major roadblock to world peace through world law.

In 13 years the World Court has decided only 10 cases and, strangely enough, the nation to blame is the United States. True, the Soviet Union does not even recognize the World Court's jurisdiction. Moscow, of course, can always retort

that it is only following American example. The United States, however, is the leader of free world nations dedicated to legal morality and individual freedom.

This year several proposals have been made to give the World Court the jurisdiction it should have. President Eisenhower, in his state of the Union message, asked for needed changes. Senator Humphrey introduced a resolution in Congress seeking to repeal the Connally amendment. Vice President Nixon has called for full recognition of the powers of the United Nations justices at The Hague and now the American Bar Association has renewed the battle which it initiated in 1947.

Congress could make a notable contribution toward achieving more international stability if it would knock out the Connally amendment at its forthcoming session.

[From the Boston (Mass.) Christian Science Monitor, Oct. 15, 1959]

UNTYING THE WORLD COURT

Americans take it for granted that they are a law-abiding people living under a law-abiding Government of their own creation. They are, and it is—for the most part.

However, for nearly a decade and a half the United States has refused to be bound to go to court to settle international disputes unless, in essence, it decides it should.

The result, as described in detail on the other side of this page, is that the World Court at The Hague has decided only 10 cases in 13 years. That's about as many opinions as the U.S. Supreme Court may hand down on a single decision Monday.

Blame for this situation may be apportioned fairly widely among the nations. The other world titan, the Soviet Union, does not even formally accept the World Court's jurisdiction. But the United States is the leader of nations dedicated to legal morality as a bulwark to individual freedom. So it must hold itself ethically responsible for having set the example for other nations to use the Court only when they wish to call a matter international rather than domestic.

This year there has been a sudden upsurge of moves to end U.S. reservations about the use of the World Court.

President Eisenhower called for a change of the situation in his January state of the Union message. Democratic Senator Hubert Humphrey introduced a congressional resolution to repeal the Connally amendment of 1946, which reserved to the United States power to deny World Court jurisdiction.

Later in the spring, Vice President Nixon proposed that new treaties negotiated by Washington include a clause binding signing nations to refer disputes under those specific treaties to the U.N. justices at The Hague. The recent Republican policy proposals of the Percy committee second Mr. Nixon's suggestion.

And finally, this week, a special committee of the American Bar Association has come out unequivocally in favor of discarding the Connally reservation and writing the Court's jurisdiction into new treaties.

This growing nonpartisan movement is needed. We believe that the cause of world stability would be measurably advanced if the next session of Congress would repeal the Connally amendment.

The way to move toward justice by international law rather than by international bombing, market cutting, or infiltration is to agree to a legal system without reservation, and then to list the Court as a binding arbiter on each treaty freely signed.

International law will never have a chance to grow into a system of peaceful justice matching that of tribal, community, city, State, and National law unless its potential clients agree to its formation piece by piece as their mutual self-interest allows.

There is a tendency to feel that big nations can get their way without the Court, so why worry? The fact is that any big nation widely involved in the world is subject to a multiplicity of nonmilitary conflicts that may go against it unless it appeals either to brute force or to law.

Washington is publicly committed against the former. It is only sense to see that full use is made of the latter.

[From the New York (N.Y.) Herald Tribune, Oct. 13, 1959]

TIME TO UNDO SOME DAMAGE

For years one of the cornerstones of American policy has been an effort to strengthen the rule of law among nations, to the end that ultimately this should supplant the rule of force.

Yet the United States has at the same time been guilty of hobbling the very Court that is the institutional symbol of international law. By its own statute, the International Court of Justice is bound not to pass on matters "essentially within the domestic jurisdiction" of any nation. But in 1946 the Senate adopted the so-called Connally amendment, which reserves to this country the exclusive right to decide whether a dispute is essentially within the domestic jurisdiction of the United States—that is, unilaterally to deny jurisdiction to the World Court, the 15 members of which are chosen by the United Nations.

The basic evil of this is that it stands as a public declaration of a lack of confidence in the Court. Our unfortunate example has been followed by other nations, and has contributed to the fact that since the Court was set up only an average two cases a year have come before it.

Many voices, including that of the present administration, have been raised in favor of modifying or eliminating the Connally amendment. The latest has come now in the form of a report by a committee of the American Bar Association, which argues that the provision "has provided an excuse for saying that not even the United States, the leader of the free world, is wholehearted in its support of international judicial processes."

The Nation has matured considerably in its role of world leadership since 1946. A mark of that maturity would be the prompt repeal of the damaging Connally amendment, with the affirmation such action would provide of our respect for international law and our faith in the World Court.

[From the New York (N.Y.) Times, Oct. 13, 1959]

FOR A REAL WORLD COURT

A court whose jurisdiction depends on the whim of the defendant cannot add much to the law. Yet this is the status of the International Court of Justice, which in effect has existed since 1922, first under the League of Nations, later under the United Nations.

Signatories to the statute creating the World Court, as it is handily called, may accept compulsory jurisdiction "in all legal disputes" concerning the interpretation of a treaty, any question of international law, threatened breaches "of an international obligation" and reparations "to be made for the breach of an international obligation."

The United States had rejected the old League's Permanent Court of International Justice. We were logically compelled to accept the new Court, since it was tied to the charter, but under the Connally reservation we stipulated that compulsory jurisdiction should "not apply to * * * disputes with regard to matters which are essentially within the domestic jurisdiction of the United States, as determined by the United States." In simpler terms, we would honor our international parking tickets only if we felt like it.

Comparable reservations have been made by France, Israel, Pakistan, South Africa, and other countries. The United Kingdom and some British Commonwealth members have reserved "disputes * * * which by international law fall exclusively within the jurisdiction" of the member nation.

A committee of the American Bar Association has now urged that we take the lead in ending this jurisdictional nonsense. Either we have a World Court or we do not. The time has come to repeal the Connally reservation, as a moldy relic of a dead isolationism. No worthwhile element of our sovereignty will be endangered if we fully accept the rule of law and reason, and it will certainly be endangered if we do not.

[From the Des Moines (Iowa) Register, Oct. 13, 1959]

STRENGTHENING WORLD COURT

The World Court cannot amount to much for settling legal disputes among the great powers (though it can among lesser powers) so long as the United States clings to the Connally reservation.

The United States, in joining the Court, accepted obligatory jurisdiction of the Court in four classes of international disputes with countries which had also accepted obligatory jurisdiction in these four types of cases. But by the Connally amendment, the United States insisted on deciding for itself whether any particular dispute was properly international, or whether it was "essentially domestic."

The Court, under its own statute, refuses to consider cases it regards as essentially domestic, but the United States insists on being the judge in its own case on this point.

President Eisenhower recognizes the unfairness of this and has spoken out for repealing the Connally reservation.

The American Bar Association has been critical of this reservation for some time. Sunday a new report by an American Bar Association committee came out strongly urging repeal of this reservation.

In 1946, the reservation may have been necessary to get the United States to join in setting up and supporting the Court at all. Senator Thomas Connally (Democrat, of Texas) thought so, and sponsored the amendment. Past history justified his concern. Successive Senates had blocked the recommendation of every single President from Woodrow Wilson to Franklin Roosevelt for joining the old 1920-45 World Court. Earlier Senates had insisted on similar reservations to the arbitration treaties of the 1900-1914 period.

But a lot has happened since 1946.

A rule of law among nations as well as within nations is no longer an idealist's dream: it is a practical necessity for survival.

Strengthening the World Court is only a small part of the solution, as advocates of repeal of the Connally amendment recognize. But it is an important step.

The world has no police force, the World Court has no marshals, there is no real world legislature. There are some promising beginnings, most of them in the United Nations. But the United Nations is a voluntary association, and very far from a world government.

The World Court exists. It is highly respected. So far it has been very little used. The American Bar Association committee report points out one of the easiest and most promising ways to give the Court more prestige and more work to do.

[From Time, December 7, 1959]

THE PRESIDENCY

TOWARD WORLD LAW

"One of the great purposes of this administration," wrote Dwight Eisenhower on the eve of his world tour, "has been to advance the rule of law in the world through actions directly by the U.S. Government and in concert with the governments of other countries. It is open to us to further this great purpose both through optimum use of existing international institutions and through the adoption of changes and improvements in those institutions."

So saying, in a letter to Minnesota's Senator Hubert Humphrey, the President allied himself with Humphrey's persistent effort to remove a major roadblock in the U.S. relationship with the International Court of Justice at The Hague. The roadblock: the so-called Connally amendment of 1946, under which the United States reserves the right to bypass the World Court on any dispute that it considers "essentially domestic."

"I intend, on an appropriate occasion," the President promised Democrat Humphrey, "to restate to the Congress my support for the elimination of this reservation. Elimination of this automatic reservation from our own declaration accepting compulsory jurisdiction would place the United States in a better position to urge other countries to agree to wider jurisdiction of the International Court of Justice."

With such a quiet "great purpose," which is not the stuff of headlines, the United States could contribute to the world a clear and enduring leadership which is not the stuff of communism.

[From the Atlanta (Ga.) Journal, Oct. 18, 1959]

A REAL WORLD COURT

The American Bar Association has nudged the United States a little closer toward endorsement of the principle of world peace through world law. One of its committees has urged that this country abandon its reservation to the jurisdiction of the International Court of Justice.

The Connally reservation as it is called, aided by the U.S. Senate when it accepted the World Court's jurisdiction, declared that it would not apply to purely domestic matters and that it would be the Government's business to decide what was domestic and what wasn't. This gives the United States an automatic veto over any suit brought against it in the World Court.

The ABA committee charged that the Connally reservation had severely reduced the effectiveness of the World Court in handling international disputes. It thus echoed the opinion voiced in Atlanta last May by Charles S. Rhyne, former president of the ABA.

President Eisenhower has called for repeal of the reservation but has sent no draft of legislation to Congress. Vice President Nixon has urged that future treaties this country negotiates include a proviso that both parties accept unqualified jurisdiction by the World Court.

Only when international relations are resting solidly on the bedrock of world law will there ever be any permanent peace. This country has a glorious opportunity to reclaim the propaganda initiative from Soviet Russia in a sincere promotion of world peace through world law.

[From the Miami (Fla.) News, Aug. 28, 1959]

IF WE MEAN WHAT WE SAY, REPEAL THAT AMENDMENT

Freedom under law is one of the most powerful ideas ever conceived by the mind of man.

These are not our words, although we subscribe to them wholeheartedly. They are the words of U.S. Attorney General William P. Rogers in his address to the American Bar Association here.

Mr. Rogers was urging that the United States put itself unreservedly under the jurisdiction of the International Court of Justice at The Hague.

This Court, usually known as the World Court, was set up to adjudicate disputes between nations. It has never functioned except to a small degree because the United States, under the Connally amendment, reserved to itself the right to say whether or not it accepted jurisdiction.

As a result, the Soviet Union, following our precedent, has refused to allow itself to be sued, claiming in each instance that the dispute was within its own domestic jurisdiction.

That was the Soviet plea when we have attempted to sue that country for wanton attacks on American military aircraft.

Presumably, Mr. Rogers was speaking for the Eisenhower administration. President Eisenhower in his state of the Union message asked Congress to "reexamine" our position. Senator Hubert Humphrey of Minnesota introduced a resolution to repeal the Connally amendment. It has been buried in the Senate Foreign Relations Committee.

If President Eisenhower really believes in freedom under law as a substitute for war, why doesn't he call upon the Senate to act?

[From the Pittsburgh (Pa.) Post Gazette, Oct. 26, 1959]

WORK FOR THE WORLD COURT

An essential way for the United States to strengthen the International Court of Justice is, as we recently discussed in these columns, to scrap the Connally

amendment. This device, which reserves to the United States the right to say what is or isn't of "domestic jurisdiction," imposes a national veto over the Court's proper work. Both in itself and as an example to free nations of lesser stature than the United States, the Connally amendment hobbles the Court and helps stifle the growth of an international order of law. The American Bar Association wisely wants the amendment repealed.

But there is something else the United States can do to enhance the Court. Earlier this year, Vice President Nixon suggested that in any new treaty, the United States and the other contracting party include a clause giving the International Court—which is less formally known as the World Court—jurisdiction over disputes arising from the treaty. A committee of the American Bar Association calls this a "sound supplemental approach"—supplemental, that is, to the primary need for repealing the Connally amendment. And the Nixon suggestion, the committee says, has the advantage of being "a step-by-step approach which could involve any nation whether or not it had accepted the Court's compulsory jurisdiction generally."

Strengthening the International Court has more than altruism to commend it. International trade, foreign investment, economic development in needy lands—all these would be stimulated if commercial and other contracts between nations, or among citizens of different nationalities, had the validity that legal due process can confer. A private investor, for example, might be far more willing to invest in a risky development venture in some newly independent land if he knew that, in case of serious dispute, he and the other parties were ultimately bound to let the International Court decide.

The next Congress would do well to recall this comment by the American Bar Association's committee: "It is of major and increasing importance to the United States to improve the means of protecting its international trade and foreign investments by improving the means of resolving international business disputes. A weak World Court impairs international law and hurts all forms of international adjudication."

[From the Mason City (Iowa) Globe-Gazette, Aug. 4, 1959]

YES, KIND READER, THERE IS SOMETHING YOU CAN DO

If you believe, as a growing number of people do, that the long-range hope for world peace lies in extending enforceable law to the world dimension, there is something you can do about it.

It won't be necessary for you to join any organization, make a speech, or even write a long letter. It's something much easier and more direct than any of these.

Just write your Senators and Representative in Washington that you think the Connally resolution should be rescinded at the earliest possible moment.

This legislation makes the United States the principal stone in the path of meaningful accomplishment by the World Court of Justice.

In it United States tells the world that it holds itself aloof from the jurisdiction of this tribunal.

What can we expect from other nations of the free world which look to us for leadership?

Is any risk involved in making ourselves amenable to the accepted code of international law?

Indeed there is. We'd be delegating a measure of sovereignty. It would be a calculated risk.

But that risk would be infinitesimal compared with the chance we're taking every day with unregulated nuclear weaponry in a world without enforceable law.

That's why we suggest that you contact your representatives in the two branches of our national Congress.

[From the Washington (D.C.) Post, Apr. 11, 1959]

UNITED STATES VERSUS WORLD COURT

(By Carroll Kilpatrick)

HUMPHREY WOULD UNFETTER IT

Because of unresolved differences within the administration, the Senate has moved again to take the initiative away from the White House on an important foreign policy issue.

President Eisenhower said in his state of the Union message in January that he would propose a reexamination of this country's relations with the International Court of Justice "to the end that the rule of law may replace the rule of force in the affairs of nations."

The President's promise at the time stirred a good deal of interest in the Senate and particularly among leaders of the American bar. But the administration was not able to make up its mind as to exactly what it wanted to do, with the result that nothing was done.

In the absence of a specific recommendation from the President, Senator Hubert H. Humphrey (Democrat of Minnesota), a member of the Foreign Relations Committee, introduced a resolution to carry out what he thought the President had in mind in his message to Congress.

Last fall, Attorney General William P. Rogers said that the time had come for an amendment to the resolution governing this country's adherence to the World Court. The State Department also was said to be in favor of amendment, but somehow the matter became embroiled in redtape. So Humphrey ran with the ball.

When the United States in 1946 agreed to join the World Court and to accept the compulsory jurisdiction of the Court in specified areas of international law, the Senate adopted an amendment offered by former Senator Tom Connally (Democrat of Texas) which seriously limited the Court's jurisdiction.

The original resolution said that the United States would not recognize the jurisdiction of the World Court in "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States," to which the Connally amendment added the words "as determined by the United States."

The Connally amendment was adopted by the overwhelming vote of 51 to 12, partly because of the Senate's concern lest the Court be brought into disputes involving race relations and partly because of the influence of such isolationists as former Senator John W. Bricker (Republican of Ohio).

The six words of the Connally amendment, according to Humphrey, created "one of the major roadblocks to an effective International Court of Justice." His resolution would delete those words.

Charles S. Rhyne, past president of the American Bar Association and chairman of the ABA's Committee on World Peace Through Law, told an audience here last month that the Connally reservation has had a "crippling and blighting effect" on the Court. He said it was "disastrous to the rule of law internationally."

Rhyne cited the recent complaint for \$1.3 million in damages which the United States filed in the Court against Russia for shooting down an American plane over the Sea of Japan.

Russia filed an answer saying the shooting was within her domestic jurisdiction, and the Court then summarily dismissed the United States suit.

The Foreign Relations Committee in 1946 argued against the restrictive clause in these words: "The question of what is properly a matter of international law is, in case of dispute, appropriate for decision by the Court itself, since, if it were left to the decision of each individual state, it would be possible to withhold any case from adjudication on the plea that it is a matter of domestic jurisdiction."

The Court has ruled that if one state that is party to a dispute reserves to itself the right to determine what is a matter of domestic jurisdiction the other party may do the same.

Humphrey told the Senate that the Court is one of the most ineffective instruments of the United Nations, largely because the greatest power reserved to itself the right to determine what matters may go before the Court.

"The United States, and in particular the U.S. Senate, cannot escape responsibility for the Court's ineffectiveness," he said.

Since the Humphrey resolution involves amendment to a treaty it requires a two-thirds vote of the Senate for approval. The chances of winning such support at this time are slim—unless the administration decides to make a vigorous fight for it.

[From the Economist, London, England, Air Edition, Oct. 24, 1959]

MORE RULE FOR LAW

For the past 13 years the International Court of Justice, set up at The Hague by the League of Nations in 1922 and continued by the United Nations, has languished for lack of work. Since 1946 only 17 major cases have been decided and a principal reason for this poor showing has been the reserved attitude of the United States. The Court's jurisdiction is confined to disputes over treaties, international law, and threatened breaches of international obligations; all domestic matters are excluded by the originating statute. In 1946 the Senate agreed to American participation in the Court, subject to the exclusion of disputes "essentially within the domestic jurisdiction of the United States." This rider was innocuous if tautological, but it was then modified by an amendment moved by Senator Connally of Texas, which added the words "as determined by the United States" and was carried by 51 votes to 12. Accordingly it rests with the United States to decide whether any dispute to which it is a party should be brought before the Court.

Other countries have not been dilatory in following the American example: the Soviet bloc rejects the Court on doctrinal grounds, but of the 34 of the 82 members of the United Nations who accept its jurisdiction, 13 have made similar reservations. Furthermore, the Court applies a doctrine of reciprocity by which any country in conflict with the United States can invoke the domestic reservation.

During this year American criticism of the Connally amendment, which has been sporadic since its inception, has grown considerably in volume. President Eisenhower referred the question to Congress in his state of the Union message; Senator Hubert Humphrey sponsored a congressional resolution to repeal the amendment on which no action has yet been taken; and in April, Vice President Nixon also called for repeal and the adoption in all new treaties of a clause obliging signatories to refer disputes arising under them to the Court for decision. His suggestion has been endorsed by the Republican committee which has recently been drawing up a policy for the party, and it has received support from a special committee of the American Bar Association, whose detailed report was published earlier this month. The cause of repeal has also been taken up by sections of the press, which have advocated it in order that the rule of law may be extended and also, for more practical reasons, in order to protect American interests abroad. Public opinion has now begun to stir, but it will need some decisive move by the administration, such as a special Presidential message to Congress, if the momentum gained so far this year is to be translated into effective action.

[From the Mason City (Iowa) Globe-Gazette, July 27, 1959]

UNITED STATES BLOCKS THE PATH TO A WORLD UNDER LAW

It's time to get on Vice President Nixon's proposal for a fuller and more fruitful use of "existing instrumentalities for peace" as one way to blunt "the sword of annihilation" hanging over the head of mankind.

This idea was included in an eloquent speech by Nixon before the Academy of Political Science in New York and it came in for an enthusiastic reception, first from the audience, next from the press, and then from the public.

The administration, Vice President Nixon assured his hearers, was prepared to ask Congress to join it in moving toward the end of peace through the processes of law by lowering a barrier imposed by the Senate back in 1946.

That barrier took the form of the so-called Connally amendment.

It reserved to the United States the right to make its own decision as to whether a case fell exclusively within the country's domestic jurisdiction.

It constituted a full pail of cold water dumped on the World Court's machinery for settlement of international disputes.

It not only tied one hand of the Court so far as we are concerned but it encouraged other countries to make similar reservations.

Encouraged by the Nixon speech, the American Bar Association redoubled its own efforts to bring about a removal of the crippling Connally reservation.

Under the enlightened leadership of the organization's president, Charles Rhyne of Washington, widespread support by the bar was rallied for the Nixon proposal.

Wholly beyond and above narrow partisanship, lawyers throughout America gave sanction and support to the principle enunciated by Nixon in his April 18 address to the political scientists.

An early special message from the President was not only hoped for; it was expected. But it has not been forthcoming—and the time is lessening for action at this session of Congress.

It's idle to talk about extending enforceable law to world dimensions so long as the United States itself is second only to the Kremlin in obstructing the path to that goal.

[From the New York (N.Y.) Post, Aug. 31, 1959]

AND IN THE WORLD

The United States makes a big point in its propaganda abroad about its efforts to help insure peace and justice under law throughout the world. Yet our Government is prevented by its own laws from fitting its actions to its words. This is glaringly evident in our relationship with the World Court.

The World Court was established by the U.N. in 1945 to decide legal disputes between nations. It sits in The Hague. Its 15 judges are elected by the General Assembly and the Security Council. But the United States, in adhering to it, stipulated in the so-called Connally amendment that this country reserved the right to exclude from the Court's jurisdiction any case the Government regarded as essentially domestic. In short, we can't be haled into court if we don't want to go.

The effect of this, of course, is a crippled Court. After our blow to its authority, seven other nations made similar reservations. And the Soviets, of course, never accepted the Court in the first place.

Early this year there was a lot of talk about repealing the Connally amendment. President Eisenhower, in his state of the Union message, asked Congress to reexamine our relations with the Court "to the end that the rule of law may replace the rule of force in the affairs of nations." Senator Humphrey (Democrat of Minnesota) introduced a repeal resolution, which the State Department has endorsed.

There has been a strange quiet on the subject since April, but last week Attorney General Rogers revived it in a speech to the American Bar Association. Rogers urged the Nation's lawyers to support the repeal drive so that we could give forceful and dramatic meaning to this country's faith in justice under law.

We second the motion.

Whether the Russians go along or not, we can perform a positive act to prove to the world that our concept of justice is truly international, with no strings attached.

[From the Washington (D.C.) Post, Sept. 1, 1959]

FOOTING FOR THE WORLD COURT

Attorney General Rogers has made an effective plea for resuscitation of the World Court. His speech to the General Assembly of the American Bar Association at Miami Beach pointed out that the United States was "the first nation to provide that the jurisdiction of the Court should be determined not by the Court but by us," in other words, to undercut it. Following the lead of this country, seven other nations made similar reservations, and the rule of reciprocity allows every country with which the United States has a dispute to decline to accept the jurisdiction of the Court.

Suppose that our domestic courts could decide only those cases in which both parties were willing to accept their jurisdiction. The effect on the judicial system would be disastrous. Instead of genuine courts, we should have only

arbitration tribunals functioning in such cases as might be submitted to them voluntarily by all the parties concerned. That would leave us not far removed from the law of the jungle.

No one should have any illusions about the establishment of a universal rule of law while the world is divided between freedom and communism. But at least the United States should be moving toward wider application of law to disputes within the free world, and it can scarcely do this while continuing to cripple the World Court. It is highly desirable that the Attorney General has spoken out clearly on this subject, as have Vice President Nixon, Senator Humphrey, and many others. Much more will be required, however, before the Senate can be induced to correct its ill-advised reservation to the International Court of Justice convention. We still hope that President Eisenhower will find time to stir the conscience of the Senate on this matter so vitally related to his campaign for peace and justice.

[From the U.S. News & World Report, Sept. 28, 1959]

LAW OR ANARCHY?

(By David Lawrence)

The spectacle of two heads of state striving in personal conversation to reach an understanding on problems of world peace, because normal channels have brought no solutions, is discouraging evidence of how far away we are from fundamentals.

For decades past, we and the people of other free nations have extolled law as the governing principle of human conduct.

Today we have turned the clock back. We have reverted to the days of the monarchs and the czars—to the mistaken theory that, if two chiefs of state will only smile at one another and wine and dine each other, all will be well between their countries.

The slavish praise recently bestowed, for instance, by statesmen in many countries on the formula of holding frequent "summit" conferences is an indication of how far afield we have strayed, for we have virtually ceased to champion the concept that the rule of law can as well be applied to nations as to individuals. Instead, we have become victims of the propaganda that says two "prime ministers" can settle by means of compromise, concession, and surrender to expediency those international problems which involve the very essence of orderly progress in a civilized society.

Fifty years ago, eminent statesmen of many countries, including our own, urged that every "justiciable" question—issues involving purely judicial and legal matters—be submitted to an international court and that disputants should agree to abide by the decision. We rarely hear that doctrine expounded today.

A World Court has indeed been set up at The Hague, but there are very few people who know much about it. Governments hesitate to use it. For there is no world opinion behind the idea of submitting international disputes to the World Court.

We in America, after many years of debate in our Senate, ratified a resolution making America a participant in the World Court. We insisted on a "reservation" which specifically exempted domestic questions, and we felt that whether to submit such a case for settlement should be decided by our own Government.

Today it is being argued by the administration that we should abandon this reservation altogether. Regardless of the merits of such a proposal, the fact is that we haven't even given the World Court itself the respect and support that it deserves.

What is needed is a Senate resolution of reassurance which would state affirmatively that the Court shall confine itself to consideration only of those cases involving essentially international questions.

The intermittent debate over what kind of cases the World Court should decide has diverted attention from the basic issue—whether a tribunal shall be utilized to help make international law as powerful in the court of world opinion as statutory law is within a country that believes in the rule of law.

Most of the disputes that today threaten the peace of the world are international. They involve questions of fact that can be investigated and truths that can be established by impartial commissions.

The problems that have arisen in Hungary and East Germany are not internal. They are the direct result of a forcible prevention of free elections by an outside government. The exercise of sovereignty is only theoretical where military duress is applied from the outside and a puppet government is then hailed as having been chosen by its own people. Such interference is plainly an international action.

We have in the Middle East a potential source of possible war. Egypt contends she owns the Suez Canal and, alleging that she is in a state of war, argues that even vessels flying a Danish flag can be barred if they carry cargoes from Israel to non-Egyptian ports. But, by historic treaties and agreements, the canal is an international waterway. Long ago international law set forth the rights of neutrals even in time of war. Surely, here is an issue for the World Court to decide. Why isn't world opinion being mobilized today behind this rule of law?

Premier Khrushchev and President Eisenhower cannot substitute official communiques or public exhortations for the rule of law. "Settlements" sought through the expediences of personal conference cannot be lasting. We have yielded to the passion for exhibitionism in world politics. We cannot assure peace through the temporary blending of the minds of two individuals who happen to be heads of government. Nor can we be safe as long as a one-man government is in power in Moscow. The people must rule.

We are living in a state of international anarchy. We must instead build a firm foundation of law and order and be prepared, if necessary, to visit the condemnation of mankind on the guilty and to utilize all the instrumentalities of moral force to achieve respect for and obedience to a world system of law.

Leaders pass off the stage, but legal principles governing international behavior can form an enduring code that will help to preserve world peace.

[From the Racine (Wis.) Journal, July 25, 1959]

MOVE TO STRENGTHEN WORLD LAW

The American Bar Association's campaign for "peace through world law" has indications of becoming more than a mere slogan. At least two definite projects to take action that would strengthen the concept of world law are developing, and the activity is moving into the level of State and local bar associations.

One of the projects being organized is a meeting of lawyers from all nations of the world, acting independently of their respective governments, planned for 1961. The second is a sustained legislative drive to eliminate the legal limitations which the United States has placed on its own participation in the World Court at The Hague, capital of the Netherlands.

The ultimate objective of this program is to strengthen the World Court, and to induce nations to accept its jurisdiction and use it more frequently to settle international disputes.

Bruno Bitker, a Milwaukee attorney, explained the function and activity of the World Court in Racine last week, as a part of the program to acquaint Americans with the Court and its potential for peace. Bitker deplored the fact that so little use is now being made of the World Court and its 15 justices that it has rendered only 10 decisions in the past 13 years (while the U.S. Supreme Court, by comparison, was acting on more than 1,300 cases).

The present World Court actually dates back to 1920, when it was formed as an instrument of the old League of Nations. Its present statute was established by the United Nations, and its jurisdiction is accepted unconditionally by 20 nations. Eleven other nations, including the United States, accept its jurisdiction conditionally. The reservation of the United States, unfortunately, has been a crippling factor. Under present law, the United States excludes from the Court matters which are essentially domestic, or internal, in nature. This is perfectly proper, except that the United States also reserves the right to decide for itself what is or is not domestic. Clearly, this weakens the World Court, and weakens the position of the United States in acting as a proponent of world law.

Perhaps the most frequent question of the sincere layman in approaching the World Court is: "What law does it act under?" In that there is no world law-making body, that would seem to be a legitimate question.

Attorney Bitker explained, in his talk here, that there is a body of international law, including most of the commonly accepted rules of equity and the

written international laws which consist of treaties and other types of international agreements.

A second question is the ability of any international court to enforce its rulings. The answer to that question cannot be as definite, but it goes to the question of acceptance of the World Court's jurisdiction. As individuals, communities, and States, we accept the jurisdiction of our courts, and that is their major strength. Of course, those of us who do not accept that jurisdiction can be forced to do so; in that respect, there is no international machinery for enforcing world law, other than the opposite of the law itself: war. But, until we get stronger law enforcement machinery, there is still a large field of activity for the World Court among those who do accept its jurisdiction.

The primary problem now, aside from that of jurisdiction, is to get nations to use the World Court. If the American Bar Association, through its efforts at home and in the international field, can achieve a better and wider use of the World Court, it will have made a most substantial contribution to the development of world order and, eventually, to the cause of world peace.

[From the Monroe (Mich.) News, July 7, 1959]

GROWING BODY OF INTERNATIONAL LAW DIRECTS ATTENTION TO WORLD COURT FOR JUDICIAL SETTLEMENT OF DIFFERENCES

The growing part played by force and threats in world affairs is directing attention to the possibility of making more use of judicial processes to settle argument among nations. The Eisenhower administration and the American Bar Association are advancing proposals to that end. Editorial Research Reports, a Washington news-analyzing agency, reviews the significant developments.

WASHINGTON.—President Eisenhower said in his state of the Union message last winter he was determined, during the final 2 years of his administration, to intensify efforts "to replace force with a genuine rule of law among nations."

Vice President Nixon went into more detail before the Academy of Political Science in mid-April. He pointed out the primary problem was "not the creation of new international institutions but the fuller and more fruitful use of the institutions we already possess."

When the United States became a member of the World Court in 1946, it signed the optional clause accepting the compulsory jurisdiction of the tribunal in certain types of cases. But what it gave with one hand it virtually took away with the other.

The so-called Connally reservation excepted cases involving essentially domestic matters and said the United States would be the judge as to what matters were domestic. With this country leading the way, numerous others similarly qualified their acceptance of the compulsory jurisdiction clause, and the Communist nations failed to sign the clause even with reservations.

This reluctance to agree in advance to adjudication of international disputes has been in good part responsible for the World Court's comparative idleness. In a dozen years it decided only 10 cases.

The Vice President made it clear in his recent speech genuinely domestic matters must remain within the jurisdiction of domestic courts, but he said the Connally reservation should be modified. A Democratic senator, Humphrey, of Minnesota, has introduced a resolution to revoke the privilege now claimed and let the World Court determine whether a dispute is essentially domestic or essentially international.

The administration has not yet taken a stand. But Nixon suggested future international agreements, political as well as economic, should include provisions requiring submission to the World Court of disputes over interpretation of their terms and binding the parties to accept the decision of the Court.

A committee of the American Bar Association led by Charles S. Rhyne, former American Bar Association president, is campaigning for modification of the Connally reservation.

Another Rhyne proposal, which the recent Atlantic Congress in London agreed to study, would have the North Atlantic Treaty Organization set up a court to handle economic disputes, including claims made by individuals, that involve NATO nations.

Various reasons have been advanced for failure of nations to make greater use of international law and legal procedures as a means of settling disputes among them. For one thing, resort to law is not a promising way to ease East-West tensions.

Communist doctrine holds that international law protects the status quo which Communists want to overthrow, so the Soviet bloc countries are scornful of Western traditions of jurisprudence.

It is more realistic, some observers assert, to seek negotiated settlements of political disputes, for a judicial determination of what is primarily a political question may not result in solution of the underlying problem.

It is contended also law cannot be regarded as a true substitute for force or threat of force so long as a government believes forces may assure more complete attainment of its objectives.

Practical considerations like these suggest international law now has no more than limited usefulness in the critical relationships of nations.

However, international law, compared with national law, is in its infancy. As time goes on, it may become increasingly an agency and force for peace.

[From the New York (N.Y.) Times, Oct. 12, 1959]

BAR HITS U.S. CURB ON WORLD COURT—REPORT ASKS REPEAL OF VETO OVER JURISDICTION—FINDS NATION'S INTERESTS HURT

(By Anthony Lewis)

WASHINGTON, October 11.—A committee of the American Bar Association urged strongly today that the United States drop its reservation to the jurisdiction of the International Court of Justice.

The committee found that the reservation had hurt the International Court, damaged American economic interests abroad and—most important—"impaired U.S. leadership of the free world."

The Connally reservation, as it is called, was added on the floor of the Senate in 1946 to the resolution accepting the International Court's jurisdiction. The amendment was offered by Tom Connally, then a Texas Senator.

The statute of the International Court itself provides that the Court will not consider disputes regarding matters "essentially within the domestic jurisdiction" of any country. The Connally amendment reserved to this country the right to decide what matters were within our domestic jurisdiction.

In effect the reservation gives the United States an automatic veto power over any suit brought against it in the International Court.

President Eisenhower and members of his administration have called for repeal of the reservation. But the administration has not sent any draft proposal to Congress.

In 1947, the American Bar Association officially endorsed repeal in a resolution of its House of Delegates. The association's new report supports the previous position with a detailed, scholarly study of the Connally reservation and arguments for and against it.

The report comes from the association's section of international and comparative law. It was prepared by a special committee of six lawyers, under the chairmanship of Lyman F. Tondel, Jr., of New York.

Secretary of the committee was Sedgwick W. Green, of New York. The other members were Eugene D. Bennett, of San Francisco; Harry LeRoy Jones, of Washington; Richard F. Scott, of Los Angeles; and John R. Stevenson, of New York.

In addition to calling for repeal of the Connally reservation, the committee endorsed as a "sound supplemental approach" the idea of accepting the Court's jurisdiction without reservation in particular treaties.

FOLLOWS NIXON'S PROPOSAL

Vice President Richard M. Nixon first advanced this proposal in a speech in New York last April. The idea would be for the United States and the other party to any new treaty to write into the draft a clause agreeing to let the International Court decide disputes arising from that treaty.

The advantage of the Nixon suggestion, the bar committee said, is that "it is a step-by-step approach which could involve any nation whether or not it had accepted the Court's compulsory jurisdiction generally."

However, the committee went on, "the reservation is the basic manifestation of the lack of effective U.S. leadership in promoting the peaceful settlement of international disputes, and it is the self-judging reservation itself that should be withdrawn as soon as practicable."

In analyzing effects of the reservation, the committee found, first, that it had greatly reduced the effectiveness of the International Court by encouraging other countries to include similar reservations about their adherence to the Court's jurisdiction.

CLAUDE WORKS RECIPROCALLY

The report pointed out that the reservations operate reciprocally. For example, some years ago France, which then had a reservation in its adherence to the Court, sued Norway, which did not. Norway contended that the issue was "domestic" and successfully invoked France's reservation.

The weakening of the International Court hurts "the United States more than others because its foreign interests are the largest," the bar committee said.

"From a strictly selfish economic point of view," the report continued, "the United States should be doing all it can to strengthen international law and to advance, not discourage, means of enforcing international obligations."

"It is of major and increasing importance to the United States to improve the means of protecting its international trade and foreign investments by improving the means of resolving international business disputes. A weak World Court impairs international law and hurts all forms of international adjudication."

"FUNDAMENTAL EVIL" NOTED

The committee said, that the "fundamental evil" of the Connally reservation, "as distinguished from those of other nations, is that it has provided an excuse for saying that not even the United States, the leader of the free world, is wholehearted in its support of international judicial processes."

"Withdrawal by the United States of its self-judging domestic jurisdiction reservation," the committee concluded, "would be a major, practical, and dramatic step toward the goal of 'the rule of law among nations.'"

The International Court, a United Nations tribunal, sits at The Hague, the Netherlands. It has 15 members.

[From the New York Times, Dec. 30, 1958]

THE WORLD COURT AND US

The United States may be getting over its jittery attitude toward the International Court of Justice, the successor to the Permanent Court of International Justice, which languished under the old League of Nations. The present Court, sitting at The Hague, and including an American member, hasn't had much to do.

Under the statute which established it, the Court does not consider any case not voluntarily submitted by one or more nations and has no power to enforce any decision. The nearest it comes to having such power, even in a vacuum, is the provision that if any party to a case "fails to perform the obligations incumbent on it under the judgment rendered by the Court" the Security Council may "decide upon measures to be taken to give effect to the judgment." The trouble is that in any dispute involving a clash between Communist and non-Communist countries, the Security Council can't and won't decide anything.

The new proposals, which James Reston reports are under consideration, would liberalize or eliminate the amendment tacked on to a ratification resolution 13 years ago by Senator Connally of Texas. Senator Connally and his supporters voted to exclude "matters which are essentially within the domestic jurisdiction of the United States." The essence of the Connally amendment was that we would deal with the Court when we felt like it and accept its decisions when we found it convenient to do so. This position made little sense then and it makes no sense now.

There are not many ways of settling international disputes. Arbitration is one way, judicial proceedings are another way, and war is a final and disastrous way. President Eisenhower would be doing a sensible and wisely diplomatic thing if he came out in favor of making the International Court a living and effective institution.

[From the New York Times, Aug. 20, 1959]

WIDE ROLE ASKED FOR WORLD COURT—ROGERS BIDS BAR AID FIGHT TO END U.S. RESERVATION ON PANEL'S JURISDICTION

(By Anthony Lewis)

MIAMI BEACH, August 20.—The Attorney General, William P. Rogers, today urged early Senate action to remove U.S. reservations to the jurisdiction of the International Court of Justice.

Speaking to the annual meeting of the American Bar Association at the Americana Hotel here, Mr. Rogers urged lawyers to work for the elimination of the right this country retains to keep any dispute out of the World Court on the ground that it involved domestic issues.

Mr. Rogers' statement was the most direct call to date by any high administration figure for repeal of the reservation. He told the audience that if the United States fails to repeal it, "other nations will not believe we are sincere in our support for the rule of law."

The World Court is bound by its own charter not to consider matters within domestic jurisdiction.

Except for the reservations by a few nations, the Court would itself decide—as other courts do—whether a case was within its jurisdiction.

NOTES FRENCH ACTION

Mr. Rogers noted that France last month had withdrawn a reservation similar to that of the United States. He said France was "surely as sensitive as we are in matters of sovereignty."

Of the 10 members of the North Atlantic Treaty Organization, Mr. Rogers said, "the United States is the only one which denies to the Court the right to determine its own jurisdiction."

He pointed out that under principles of reciprocity, any country involved in a dispute with the United States could invoke a U.S. reservation of jurisdiction and keep this action out of the Court.

He said no court could function effectively under such conditions.

CONNALLY AMENDMENT

The basis for the U.S. reservation is the so-called Connally amendment.

This was sponsored by Senator Tom Connally, Democrat of Texas and chairman of the Foreign Relations Committee, when the Senate in 1946 ratified this country's acceptance of the Court's jurisdiction.

The Attorney General also renewed a proposal first made in a speech last spring by Vice President Richard M. Nixon—that the United States try to write into future international agreements a clause providing for World Court resolution of any disputes over interpretation of the agreements.

"The fact that we may not be successful in securing agreement in such a clause in all cases does not mean that we should fail to try," he said.

He mentioned, for example, the possibility that the Soviet Union would refuse to go along with the provision in agreements.

"The more often the Soviets oppose reasonable methods to solve world tensions," he said, "the more the nations of the world will come to recognize the significance of the Soviet policy of world domination."

Mr. Rogers saw hope that Soviet leaders today "may be willing to permit a freer flow of ideas between our two countries than they have in the past."

In this connection he urged exchanges of lawyers and judges so that Soviet legal figures "may study our constitutional system and the operation of our courts" and we theirs.

The bar association announced today that its 1961 annual meeting would be held in St. Louis. Next year's will be in Washington.

[From the St. Louis (Mo.) Post-Dispatch, Oct. 12, 1959]

BAR UNIT URGES EASING OF CURB ON WORLD COURT—ECONOMIC INTERESTS OF UNITED STATES DAMAGED, COMMITTEE SAYS

WASHINGTON, D.C., October 12, 1959.—An American Bar Association committee urged strongly yesterday that the United States drop its reservation to the jurisdiction of the International Court of Justice.

The committee found that the reservation has hampered the International Court, damaged American economic interests abroad and—most important—"impaired U.S. leadership of the free world."

The Connally reservation, as it is called, was added on the floor of the Senate in 1946 to the resolution accepting the International Court's jurisdiction. The amendment was sponsored by Senator Tom Connally of Texas.

The statute of the International Court provides that the Court will not consider disputes regarding matters "essentially within the domestic jurisdiction" of any country. The Connally amendment reserved to this country the right to decide what matters were within our "domestic jurisdiction."

In effect the reservation gives the United States an automatic veto power over any suit brought against it in the International Court. It can simply invoke the reservation, and the Court then cannot decide the case.

President Eisenhower and members of his administration have called for repeal of the reservation, but the administration has not sent a specific draft proposal to Congress.

The American Bar Association in 1947 officially indorsed repeal in a resolution of its house of delegates. The new ABA report supports the previous position of the group with a detailed study of the Connally reservation and the various arguments for and against it.

The report comes from the ABA's section of international and comparative law. In addition to calling for complete removal of the Connally reservation, the committee indorsed as a "sound supplemental approach" the idea of accepting the Court's jurisdiction without reservation in particular treaties.

Vice President Nixon first advanced this proposal in a speech in New York last April. The idea would be for the United States and the other party to any new treaty to write into the draft a clause agreeing to let the International Court decide disputes arising from that treaty.

The advantage of the Nixon suggestion, the bar committee said, was that "it is a step-by-step approach which could involve any nation whether or not it had accepted the Court's compulsory jurisdiction generally."

"However," the committee added, "the treaty approach should supplement rather than replace any action taken by the United States with respect to the self-judging domestic jurisdiction reservation."

"The reservation is the basic manifestation of the lack of effective U.S. leadership in promoting the peaceful settlement of international disputes, and it is the self-judging reservation itself that should be withdrawn as soon as practicable."

[From the Pittsburgh (Pa.) Post Gazette, Oct. 18, 1959]

STRENGTHENING THE COURT

A committee of the American Bar Association has called on Uncle Sam to give more meaningful support to the International Court of Justice, a U.N. organ with big aims but little business or authority.

Mainly, the committee, in line with a formal resolution voted some years ago by ABA, wants repeal of the Connally amendment. This, a proviso that the Senate tied to its approval of the postwar Court treaty, imposes a kind of U.S. veto. The treaty says that the Court won't deal with disputes that concern matters "essentially within the domestic jurisdiction" of any nation. But the Connally amendment twists this reasonable tether into a noose. It says that the United States reserves to itself the right, in cases affecting it, to decide what is "domestic." In other words, the amendment gives the United States a veto over the Court's jurisdiction.

The Connally amendment is bad in itself, and worse as an example for other nations. If the sovereign nations of the world are ever to progress toward a rule of law, they will have to allow some judicial umpire to settle international disputes among them. Such progress must come slowly and by careful steps, at best, but it can hardly even begin if the premier nation of the free world, which should be the premier proponent of international law, lags rather than leads in the enterprise. Thus, the ABA committee notes that the Connally amendment has encouraged other nations to make like reservations about the Court.

In the economic field, to take a topical example, the Court could accomplish much good in promoting trade and aid among the nations. Private investors would be more willing to put their money into development abroad if they could

have more faith in the business contracts they make in certain needy but intensely nationalistic lands. Such faith can come only when contracts cannot be violated or voided later by a sovereign government; that is, only when such contracts are subject, in the event of dispute, to the binding judgment of a world court.

If only to create a better climate for international law, the administration and the next Senate should work together for early repeal of the Connally amendment.

[From the Boston (Mass.) Christian Science Monitor, Oct. 15, 1959]

ROADBLOCK TO RULE OF LAW—AN INTIMATE MESSAGE FROM WASHINGTON

(By Richard L. Strout)

The villain in the affair, curiously enough, is the United States. Not Poland, not East Germany, not the U.S.S.R.—it is the United States which, like a spoiled child, limits the use of this particular avenue to world peace. Presidents have protested against the roadblock; not long ago Vice President Nixon urged that it be removed; Senator Hubert Humphrey protested it, and now a committee of the American Bar Association comes back to the battle which the ABA itself initiated in a resolution in 1947.

If you ask yourself who is blocking peaceful settlement of international disputes you must face the disagreeable fact that the United States does not have completely clean hands.

Perhaps the most pathetic symbol of mankind's unrealized dreams in the world today is the semi-idle United Nations Court of International Justice at The Hague, which has decided only 10 cases in 13 years. There it sits, a magnificent edifice, and the nations of the world come close to atomic war because disputes are not submitted to it.

The schoolboy asks his father: "Dad, the World Court is there at The Hague. Why isn't it used?"

The father doesn't know. Probably he says: "Son, it is because people aren't yet civilized enough to submit their quarrels to law and not to war." He sighs, "Maybe they will someday," he adds to himself.

Maybe that satisfies the boy. Probably he goes out to play. But the father unconsciously begged the issue. This is all the more poignant if the father is an American, because it is America that has most at stake in the right answer—both in its economic interests and in its effort to be the leader of the free world. The ABA's section of International and Comparative Law makes these two points plain in its latest report. It repeats what Mr. Nixon and Mr. Humphrey have said, that America's reputation is being "damaged" by its present attitude.

The point is this: The United States has inserted a provision in its adherence to the World Court by which it can, in effect, veto the Court's jurisdiction over American cases.

This veto is called the Connally amendment, adopted in 1946.

The amendment says that the United States, and the United States alone, shall decide whether issues brought before the Court "are essentially within the domestic jurisdiction of the United States." This sounds plausible perhaps, but it is a loophole for escaping compulsory jurisdiction of the Court. Other nations have followed the American precedent, and the result is that the world tribunal is off in an idle backwater. A court isn't much good where the litigants can decide whether or not to use it.

Here is how the thing works: The United States recently tried to get damages from Moscow for shooting down an American plane. The Soviets (which have never formally accepted jurisdiction of the Court) simply replied that the area involved was part of their "domestic jurisdiction." Ironical? Certainly. Particularly from a nation that hasn't officially accepted the Court as part of world law. But Moscow could always retort that it was just following American precedent.

The World Court, it should be noted, is barred by solemn statute from deciding "domestic matters." The Connally amendment goes further than this, however, in six pregnant words: "as determined by the United States." This makes the United States the sole judge. It also gives sanction for any other nation to make itself sole judge, too.

Senator Humphrey has a resolution to repeal the amendment. Only Congress can do this. In the meantime it is a major roadblock to mankind's noblest aspiration—world peace through world law.

[From the Boston (Mass.) Herald, Oct. 14, 1959]

WITHOUT RESERVATION

When the Connally reservation was added to the World Court resolution 13 years ago, everyone took Senator Connally's word that the resolution couldn't pass without it.

The administration didn't want the amendment, which made our Government the final judge of whether the Court's compulsory jurisdiction applied to us in a particular case. No one else seemed to want it. But the foreign relations chairman said it was necessary, so the troublesome clause went in.

Today there is almost universal agreement that the reservation should be dropped. Experts in international law say the self-judging clause adds nothing to our security because the Court statute already forbids it to act in cases which are within the domestic jurisdiction of a member country. But the reservation has done, and continues to do, harm to the Court because it reflects our lack of confidence in the international body and makes others hesitant to accept its jurisdiction.

Why, therefore, does the reservation continue in effect? Within the year the President, the Vice President, and the Attorney General have all called for its repeal, but they have done nothing further. Only one resolution (by Senator Humphrey, of Minnesota) has been introduced, and that has made no progress.

A new push is called for.

This may have been supplied by the powerful report of the American Bar Association's international law section, which again demands repeal and adds scholarly justification for it.

"It is of major and increasing importance to the United States," the A.B.A. group says, "to improve the means of protecting its international trade and foreign investments by improving the means of resolving international disputes. A weak World Court impairs international law and hurts all forms of international adjudication."

Perhaps the appeal to the purse will do it. In any case it is for us to get over our apathy and do something about the needless and harmful Connally reservation. Congress and the administration should act in the coming session.

[From the Washington Post, Nov. 28, 1959]

COURT IN BONDAGE

What would have happened to the Supreme Court of the United States if the Founding Fathers had provided that any party to a case which it should decide could stay its hand by saying that the Court had no jurisdiction? The Court would doubtless have collapsed from want of authority, and the United States could not have become the great federal nation that it is because it would have had no effective means of settling judicial disputes. Yet the United States has inflicted on the International Court of Justice the very handicap that would have destroyed our own judicial system.

It is encouraging to have the President assure Senator Humphrey that he will ask Congress to eliminate the crippling language (the Connally reservation) that the Senate wrote into the U.S. acceptance of the World Court statute. We hope, however, that he will do more than insert a paragraph in his message on the state of the Union. What is needed is a rousing campaign to bring to the attention of the American people the consequences of this sabotaging of the World Court. It has made utterly impossible the dream of international justice and law in place of war that so many of our statesmen talk about.

The jurisdiction of the World Court is carefully spelled out in the statute by which it was created. It has no authority to decide domestic disputes in any country. Realizing that disputes over jurisdiction would arise, however, the founders provided that, in the event of such a dispute, "the matter should be settled by the decisions of the Court." Imagine, then, what a blow it was when the United States came along and said that the Court could not decide disputes within the domestic jurisdiction of this country and that the United States would decide for itself what was and was not within its domestic jurisdiction.

With this self-serving, antijudicial reservation on the record, American demands for a rule of law and reason in international affairs sound hypocritical.

Release of the World Court from the bondage of the Connally amendment ought to be regarded as one of the most important aims of the 1960 congressional session.

[From the New York Herald-Tribune, Dec. 10, 1959]

ATMOSPHERE HAS CHANGED—CUTTING WORLD COURT STRINGS

By Victor Willson

(Mr. Willson is on the staff of the Herald-Tribune Washington Bureau)

WASHINGTON.—The legal and diplomatic worlds are watching with alert attention an act of practical idealism being planned by President Eisenhower.

This is his announced intention to propose, on an "appropriate occasion," that the Senate undo an action of August 2, 1946, which, in effect, nullified the usefulness of the International Court of Justice, by hedging on American adherence.

The blow to the World Court came in just six words written by former Senator Tom Connally, Democrat of Texas, then chairman of the Senate's Foreign Relations Committee.

The words, added to a Senate resolution, gave the court, judicial organ of the United Nations, jurisdiction in international disputes affecting the United States, but excluded jurisdiction in matters regarded as domestic "as determined by the United States."

Since, under the U.N. charter, the Court and not litigants, decides what is an international dispute and what is a domestic dispute, Senator Connally's six-word reservation made American adherence to the court "illusory."

Nevertheless, the Connally reservation carried by a 51-12 vote (10 Democrats and 2 Republicans opposing). And the resolution itself, which had the effect of a treaty, was passed, 62-2. (Republicans Langer and Shipstead opposed.)

Other U.N. member nations decided quite rightly that the Connally reservation barred Court action in any case affecting the United States, without this country's consent, since it could claim that a case it didn't want to be heard was a domestic affair. Many of these nations, including most big ones, hastened to make major and minor hedges of their own.

The upshot has been that in the 13 years of its existence, the Court, which has 15 judges at \$20,000 a year each, has acted in less than a dozen cases.

Mr. Eisenhower would like to change all this with one idealistic stroke. In an exchange of letters with Senator Hubert H. Humphrey, Democrat of Minnesota, he said he will seek elimination of the "automatic reservation," and hope that other countries will follow suit, thus contributing to the "greater effectiveness" of the World Court.

But there is a thoroughly practical side to this, too.

Russia and its satellites, in and out of the U.N., never bothered with hedges on World Court jurisdiction, simply ignoring its authority on anything. On the other hand, the United States, because of its reservation on jurisdiction, can not legally hail another nation before the Court.

If the reservation were dropped by this country, however, it might very well demand a hearing before the court on such cases as the Soviet assault on Hungary, the Chinese Communist suppression of the Tibetans, and similar cases that might arise.

The defendants probably would not appear before the bar, but their condemnation by a legally constituted World Court would have a greater impact on global public opinion than a U.N. condemnation, with its always-present political overtones.

A vehicle for the President's practical idealism is already present in a resolution given to the Senate by Senator Humphrey on March 24, 1959. It would simply delete former Senator Connally's six words from the treaty.

Senator Humphrey's resolution is now in the hands of the Foreign Relations Committee, headed by Senator J. William Fulbright, Democrat of Arkansas. Though Senator Fulbright favors the deletion (he voted against the Connally reservation in August, 1946), it is understood he has hesitated to hold hearings on it, fearing that too early action might do more harm than good.

Now, it is understood, the entire atmosphere has changed because of President Eisenhower's stand. Furthermore, it is pointed out by Senate observers, the old rigid isolationist bloc in that body has been pretty well shattered by the voters.

A two-thirds vote of the Senate would be required to pass the Humphrey resolution—or a similar one proposed by the President. Though no nose-count has been attempted, knowledgeable quarters here believe it would carry easily. No House action would be necessary.

Supporters of the Humphrey resolution are quick to point out, however, that its passage would not immediately usher in an era of sweetness and light in international affairs.

Big powers, they expect, would continue to settle big issues among themselves outside the U.N.—just as they do now.

But, they add, any step that works toward the settlement of any issues, large or small, by a rule of law, instead of force, is a gain for peace.

[From the Charlotte (N.C.) Observer, Dec. 11, 1959]

ONLY ROAD TO PEACE—IKE SAYS ALL NATIONS MUST ABIDE BY LAW

HE GETS OVATION IN INDIA—INTERNATIONAL TRIBUNAL URGED

NEW DELHI (Friday) (AP).—President Eisenhower declared Thursday nations must accept the rule of international law to provide a sound basis for peace. He spoke in an academic followup to his speech Thursday in Parliament implying strong American support for India in its conflict with Red China.

"It is better to lose a point now and then in an international tribunal," he said, "and gain a world in which everyone lives at peace under the rule of law."

The President thus renewed his plea for peace in a speech prepared for a convocation at Delhi University on the acceptance of an honorary degree.

He won a deafening ovation Thursday when he appeared before 600 legislators at a joint sitting of Parliament. There he told the Indian nation, jittery over the border dispute with Red China, that the United States has strong forces ready to help its friends. He warned that military weakness invites aggression, subversion, and revolution manipulated from without.

Eisenhower delivers another speech later today at the World Agriculture Fair. He will cut a ribbon to open the 5-acre American pavilion, one of the highlights of his visit to India.

Speaking at the 30-year-old university of 10,000 students near the walled old city of Delhi, Eisenhower said development of a reliable framework of law among nations is needed to permit economic development as well as to put "an end to the suicidal strife of war."

He also proposed greater exchanges of students, so the world can "look on our youth, eager for larger and clearer knowledge, as forces for international understanding."

The President called young people the "vital, dynamic element in the world's resources for construction of a just and secure peace."

Stressing the important links of peace and international law, Eisenhower praised India for recently accepting, with only a few reservations, the jurisdiction of the International Court of Justice at The Hague.

The Indian note of acceptance followed closely the model of U.S. acceptance. The Soviet Union repented has refused to have anything to do with the Court.

"A reliable framework of law, grounded in the general principles recognized by civilized nations, is of crucial importance in all plans for rapid economic development around the earth," Eisenhower said.

The rule of law is needed, he went on, "for one good reason: If international controversy leads to armed conflict, everyone loses; if armed conflict is avoided, everyone wins."

[From the New York Times, Nov. 27, 1959]

EISENHOWER SAYS ARMS PACT VALUE OUTWEIGHS RISKS—CONCEDES SOME DANGER OF EVASION OF A TREATY BUT GREAT PERIL WITH NONE**HE WRITES HUMPHREY—PLANS NEW PLEA TO CONGRESS TO DROP U.S. RESERVATION ON USING WORLD COURT**

WASHINGTON, November 26.—President Eisenhower believes the risks of non-agreement on disarmament are "enormous."

On the other hand, he asserts, if the United States signs such an agreement it runs "some risks" that other nations might evade its terms.

He made his views known in a letter from Augusta, Ga., dated November 17, and made public today by Senator Hubert H. Humphrey, Democrat, of Minnesota.

Senator Humphrey, as chairman of a Senate Subcommittee on Disarmament, had written the President urging new efforts for arms control. The Minnesotan also urged early passage of a Senate resolution that would remove the reservation imposed by the Senate on its acceptance of jurisdiction by the International Court of Justice. The reservation is one that would permit the United States to declare "essentially domestic" an issue that it did not wish the Court to hear.

The President declared his intention to "restate to the Congress my support for the elimination of this restriction."

Such action, the President held, "would place the United States in a better position to urge other countries to agree to wider jurisdiction of the International Court of Justice."

The President said that one of the chief efforts of this country in the last half dozen years had been to try to develop means for controlling and cutting armaments.

He told Mr. Humphrey that success in this quest would bring greater security to all countries and ease the threat of a nuclear conflict.

The President said he was hopeful that the present talks at Geneva on discontinuance of atomic weapons testing would produce agreement.

Senator Humphrey wrote the President that advocacy of measures toward establishing a just and lasting peace was particularly urgent now, after the recent visit of Premier Khrushchev of the Soviet Union.

Such a move, the Senator said, would make it doubly clear to the entire world that, "while we shall strive mightily for a peaceful resolution of Soviet-United States differences, our goal has not shifted toward a two-power world."

Instead, he said, "We continue to look resolutely toward an international system in which the rights of all nations will be respected, regardless of size or military power."

Following is the text of the President's letter:

"Dear Senator Humphrey:

"I write now in further reply to your letter of October 21, 1959.

"One of the great purposes of this administration has been to advance the rule of law in the world, through actions directly by the U.S. Government and in concert with the governments of other countries. It is open to us to further this great purpose both through optimum use of existing international institutions and through the adoption of changes and improvements in those institutions.

"Timely consideration by the United Nations of threatening situations, in Egypt in 1956, in Lebanon in 1958, and in Laos in 1959, has made an important contribution to the preservation of international peace and security. The continued development of mutual defense and security arrangements among the United States and a large number of free world countries has provided a powerful deterrent against international lawbreaking. One cannot, however, be satisfied with the way events have developed in some areas, for example, Hungary and Tibet. The international community needs to find more effective means to cope with and to prevent such brutal uses of force.

"One of the principal efforts of the United States in the last half dozen years has been to devise effective means for controlling and reducing armaments. Success in this quest will bring greater security to all countries and lift the threat of devastating nuclear conflict. In order to make progress toward the goal of complete and general disarmament expressed in the United Nations resolution recently sponsored by the United States and the other members of the General Assembly, this Government has followed the policy of seeking re-

liable international agreements on manageable segments of the whole arms problem. I am hopeful that the current Geneva negotiations on discontinuance of nuclear weapons tests will produce agreement. A resulting treaty would, of course, be submitted to the Senate.

"Next year the United States will be participating in further disarmament efforts to be undertaken by a group of 10 nations which will, as appropriate, report on its progress to the United Nations Disarmament Commission and General Assembly. The best and most carefully elaborated disarmament agreements are likely to carry with them some risks, at least theoretically, of evasion. But one must ponder, in reaching decisions on the very complex and difficult subject of arms control, the enormous risks entailed if reasonable steps are not taken to curb the international competition in armaments and to move effectively in the direction of disarmament.

"As you know from my message to the Congress on the state of the Union in January 1959, and from expressions by the Vice President, the Secretary of State, and the Attorney General, the administration is anxious to contribute to the greater effectiveness of the International Court of Justice. The administration supports elimination of the automatic reservation to the Court's jurisdiction by which the United States has reserved to itself the right to determine unilaterally whether a subject of litigation lies essentially within domestic jurisdiction. I intend, therefore, on an appropriate occasion, to restate to the Congress my support for the elimination of this reservation. Elimination of this automatic reservation from our own declaration accepting compulsory jurisdiction would place the United States in a better position to urge other countries to agree to wider jurisdiction of the International Court of Justice.

"I appreciate having your views on this vitally important subject."

[From the Washington Post, Nov. 27, 1959]

IKE ASKS UNITED STATES TO BACK STRONGER WORLD COURT—PROPOSES MOVE TO REPEAL "VETO" ON JURISDICTION

(By Warren Duffee)

United Press International

President Eisenhower said in a letter made public last night that the World Court must be strengthened because more effective means are needed to prevent such brutal uses of force as the Communists applied in Hungary and Tibet.

He said he would ask Congress again to eliminate its requirement that the United States decide for itself whether a subject of litigation is a domestic problem or within the Court's jurisdiction.

Mr. Eisenhower said in a letter to Senator Hubert H. Humphrey, Democrat, of Minnesota, that he would restate to Congress, "on an appropriate occasion," his opposition to the restriction. The letter was dated November 17 from Augusta, Ga.

Humphrey had written the President asking support for a resolution to repeal the "automatic reservation" provision, authored by former Senator Tom Connally, Democrat, of Texas.

"The administration is anxious to contribute to the greater effectiveness of the International Court of Justice (World Court)," Mr. Eisenhower said.

"Elimination of this automatic reservation from our own declaration accepting compulsory jurisdiction would place the United States in a better position to urge other countries to agree to wider jurisdiction of the Court," he said.

"One of the great purposes of this administration," Mr. Eisenhower said, "has been to advance the rule of law in the world, through actions directly by the U.S. Government and in concert with the governments of other countries."

He pointed out that the United Nations and "continued development of mutual defense and security arrangements among the United States and a large number of free world countries" have provided a powerful deterrent against international lawbreaking.

But he indicated that these were not enough.

"One cannot be satisfied with the way events have developed in some areas; for example, Hungary and Tibet," the President said. "The international community needs to find more effective means to cope with and to prevent such brutal uses of force."

Mr. Eisenhower also stressed the importance of devising effective means of controlling and reducing armaments. He said that success in this quest will bring greater security to all countries and lift the threat of devastating nuclear conflict.

Mr. Eisenhower expressed hope that the current Geneva negotiations on discontinuance of nuclear weapons tests "will produce agreement." He noted that the United States would take part in further disarmament efforts next year in a group of 10 nations that will report to the United Nations Disarmament Commission and the General Assembly.

He cautioned that the best and most carefully elaborated disarmament agreements are likely to carry with them some risks, at least theoretically, of evasion.

But the alternative, he said, entails greater risks.

[From the Evening Star, Washington, D.C., Dec. 2, 1959]

FOR THE RULE OF LAW

As President Eisenhower has declared in his letter to Democratic Senator Humphrey, the International Court of Justice—more popularly known as the World Court—would be strengthened if our country withdrew its reservation regarding disputes that may be technically construed as involving questions of an essentially domestic nature. In the opinion of numerous outstanding legal experts, the effect of the reservation, which has been enacted by many other nations (in keeping with the example we set in 1946), has been to circumscribe and weaken the Court's potentialities as an organization designed to promote peace through the rule of law.

With this in mind, Mr. Eisenhower has told Mr. Humphrey that the Republican administration favors legislation under which our Government would no longer reserve to itself "the right to determine unilaterally" whether a subject of international litigation lies within domestic jurisdiction and may therefore be ignored by us if another nation brings it up before the World Court. Further, he has affirmed his intention to request Congress, on an appropriate occasion, to do away with the reservation and thus place the United States in a better position to urge other countries to agree to wider jurisdiction of the International Court of Justice. Mr. Humphrey, as chairman of a Senate Disarmament Subcommittee, has already introduced a simple resolution to that end, and it well deserves to be adopted.

Of course, on great issues involving international power plays and far-reaching political maneuvers—issues like the contest over the future of West Berlin—the World Court can do little or nothing. Such issues, in fact, lend themselves much more to negotiation than to a judicial procedure. Nevertheless, in a strictly legal sense, there are many questions that could be settled through such a procedure if countries like our own did not insist upon the unilateral right to say whether or not those questions are basically domestic. If this reservation were eliminated, the International Court's work in behalf of peace could hardly fail to increase in effectiveness.

[From The Evening Star, Washington, D.C., Nov. 27, 1959]

WORLD COURT CURB ASSAILED

President Eisenhower says "the international community needs to find more effective means to cope with and to prevent such brutal uses of force" as the Communists employed in Hungary and Tibet.

The President said he intends to renew his request to Congress to repeal a restriction on U.S. participation in the International Court of Justice, or World Court.

At present this country reserves the right to decide whether an international issue falls within the World Court's jurisdiction. In other words, no case involving the United States can be taken before the World Court without this country's approval. Other countries also reserve this right to "veto" the Court's jurisdiction.

"Elimination of this automatic reservation from our own declaration accepting compulsory jurisdiction would place the United States in a better position to

urge other countries to agree to wider jurisdiction of the International Court of Justice," Mr. Eisenhower said.

The President added:

"* * * The continued development of mutual defense and security arrangements among the United States and a large number of free world countries has provided a powerful deterrent against international lawbreaking.

"One cannot, however, be satisfied with the way events have developed in some areas, for example, Hungary and Tibet. The international community needs to find more effective means to cope with and to prevent such brutal uses of force."

The President's views were expressed in a letter to Senator Humphrey, Democrat, of Minnesota, chairman of the Foreign Relations Subcommittee on Disarmament. The Eisenhower letter, in reply to one from Senator Humphrey, was dated at Augusta, Ga., November 17. Senator Humphrey made it public yesterday.

The Senator, in his October 12 letter to the President, had praised Mr. Eisenhower for urging elimination of the World Court restriction in his state of the Union message last January. Congress took no action on the President's recommendation.

Senator Humphrey said he will ask the Foreign Relations Committee to hold hearings on his resolution to eliminate the restriction.

Mr. Eisenhower told Senator Humphrey the search for a workable arms reduction plan entails enormous risks. On the other hand, he added, "Success in this quest will bring greater security to all countries and lift the threat of devastating nuclear conflict."

Mr. Eisenhower said the United States has followed a policy of seeking international agreements on "manageable segments of the whole arms problem."

"The best and most carefully elaborated agreements are likely to carry with them some risks, at least theoretically, of evasion," the President wrote.

"But one must ponder, in reaching decisions on the very complex and difficult subject of arms control, the enormous risks entailed if reasonable steps are not taken to curb the international competition in armaments and to move effectively in the direction of disarmament."

[From Time, Dec. 21, 1959]

A WORLD OF GROWTH, A WORLD OF LAW

"One of the great purposes of this administration," wrote the President just before taking off on his global tour, "is to advance the rule of law in the world." Last week at India's Delhi University, he spoke to the "great purpose." Excerpts:

A world of swift economic transformation and growth must also be a world of law. The time has come for mankind to make the role of law in international affairs as normal as it is now in domestic affairs.

Of course the structure of such law must be patiently built, stone by stone. The cost will be a great deal of hard work, both in and out of government, particularly in the universities of the world.

Plainly, one foundation stone in this structure is the International Court of Justice. It is heartening to note that a strong movement is afoot in many parts of the world to increase acceptance of the obligatory jurisdiction of that court. I congratulate India on the leadership and vision she has shown in her new declaration [September 14] accepting its jurisdiction.

Another major stone in the structure of international rule by law must be a body of international law adapted to the changing needs of today's world. There are dozens of countries which have attained their independence since the bulk of existing international law was evolved.

What is now needed is to infuse into international law the finest traditions of all the great legal systems of the world.

And here the universities of the world can be of tremendous help in gathering and sifting and harmonizing them into a universal law. A reliable framework of law grounded in the general principles recognized by civilized nations is of crucial importance in all plans for rapid economic development around the earth. Economic progress has always been accompanied by a reliable legal framework.

Law is not a concrete pillbox in which the status quo is armed and entrenched. On the contrary, a single role of law, the sanctity of contract, has been the vehicle for more explosive and extensive economic change in the world than any other factor. The principle that men must keep bargains is a fundamental of every great legal system the world has ever known.

Whenever it has broken down, commerce, invention, investment, and economic progress have also broken down.

One final thought on the rule of law between nations: we will all have to remind ourselves that under this system of law, one will sometimes lose as well as win. But nations can endure and accept an adverse decision rendered by competent and impartial tribunals.

In hundreds of arbitral and judicial decisions over the past 170 years, it has been almost unheard of for one of the parties to refuse to comply with the decision of a tribunal once it has been rendered. This is so, I believe, for one good reason: if an international controversy leads to armed conflict, everyone loses; if armed conflict is avoided, everyone wins. It is better to lose a point now and then in an international tribunal and gain a world in which everyone lives at peace under a rule of law.

Here are two great purposes which I see as particularly fitting within the mission of the world's universities: a more massive mobilization of young people, in centers of learning where truth and wisdom are enshrined and ignorance and witless prejudices are corrected; and a broad inquiry and a search in the laws of nations for grand principles, justice, righteousness and the common good of all peoples. Out of them will then be constructed a system of law welcome to all peoples of the world because it will mean for the world a rule of law—and an end to the suicidal strife of war.

[From the Wilmington (Del.) Journal-Every Evening, Oct. 12, 1959]

NO PLACE FOR A VETO

We are glad to see that a committee of the American Bar Association has once again called attention to the absurdity of the Connally reservation to the jurisdiction of the International Court of Justice. No court can operate effectively when potential defendants reserve the right not to come before it or be bound by its decisions. And it is surely absurd that the United States, which should be doing everything in its power to strengthen international law, should in fact be hamstringing the World Court with such a reservation.

As long ago as 1947—1 year after the Connally reservation was adopted by the Senate—the American Bar Association called for its repeal. President Eisenhower and other members of his administration have taken the same position. And Vice President Nixon has taken the constructive step, which the present ABA committee heartily endorses, of suggesting that all new treaties contain a clause agreeing to let the Court decide all disputes arising from the treaty.

The Connally reservation, in fact, is the product of suspicion and fear hardly worthy of a nation which holds itself up as a champion of international law. The statute of the International Court of Justice provides specifically that the Court will not consider matters "essentially within the domestic jurisdiction" of any country. The Connally amendment reserved to this country the right to determine what matters lie within its domestic jurisdiction. The result is to give the United States an automatic veto power over any action brought against it in the Court.

We were perhaps more innocent in 1946 than we are in 1959. But Soviet Russia's misuse of the veto power in the United Nations in the past 13 years should have made it clear to any American that no international body can function effectively under such a shadow. The Connally reservation ought to be repealed at the first opportunity and we hope both the administration and the American Bar Association will press vigorously for repeal when Congress reconvenes in January.

[From the Detroit (Mich.) Free Press, Oct. 18, 1959]

CALL FOR ORDER IN THE COURT

A committee of the American Bar Association has recommended that the United States give the International Court of Justice an opportunity to be effective by dropping our own reservation to its jurisdiction.

That reservation, in effect since 1940, is actually a veto power which the United States retains over issues which can go before the Court. The Court itself has no jurisdiction over domestic matters, but the United States reserved to itself the right to determine whether a matter involving the country is or is not domestic.

That, in turn, permits the United States to be the sole judge of whether any issue to which this country is a party can be brought before the Court.

The bar association's position is similar to that held by the administration, although the latter has taken no steps toward asking Congress to remove the restriction. Vice President Nixon, some months ago, strongly urged wider use of the Court as a means of settling international disputes. His proposal was favorably received here and abroad.

The Court could, indeed, be a means of settling international problems within a framework of international law and justice. The resort to this sort of device is a principle to which the United States has long adhered. We supported the Hague Tribunal just as we have given support, by our membership, to the International Court.

But there is very little point in paying lipservice to the ideal of international law and justice, and at the same time withholding the means by which such an ideal can be attained.

There is no reason that disputes between nations should not be settled amicably and peacefully within a framework of law, just as we settle them between individuals on a national basis.

To do so implies no waning of sovereignty. On the other hand, it provides a sensible alternative to force.

[From the Worcester (Mass.) Telegram, Oct. 14, 1959]

WORLD COURT: AMERICAN VETO

The Permanent Court of International Justice—the old World Court—was set up by the League of Nations. That was one reason for our failure to adhere to it. Four successive Presidents asked the Senate to vote in favor of adherence, but the Senate always shied away. We rejected League and Court both.

The International Court of Justice—the new World Court—was set up by the United Nations. This fact has never produced any senatorial shudders in Washington, for the United States has been a full-fledged member of the United Nations from the start. The United States is also an adherent of the new World Court.

But when the Senate voted to accept the Court's jurisdiction, it added a reservation, under which the United States claims the right to decide what questions are within its "domestic jurisdiction."

A committee of the American Bar Association now urges that this reservation be dropped. It maintains that the reservation damages our economic interests abroad, impairs our prestige, and hampers the Court. President Eisenhower has called for repeal of the reservation. As long as it remains, we shall seem to be in the position of supporting the World Court only in disputes in which we are not involved.

[From the Evansville (Ind.) Courier and Press, Nov. 22, 1959]

RULE OF WORLD LAW

Men and nations give abundant lipservice to the idea of the rule of law. Men generally abide by the laws of their society, partly out of respect for the law and partly because they know that punishment awaits those who break the rules. With nations it is different. By and large, they—and this applies especially to the great powers—obey only such laws as they choose to obey when their vital interests are concerned.

This state of affairs will have to be changed if the concept of the rule of law is to be made effective among nations. And until it is effective, nations cannot claim to be very far removed from the jungle.

The American Bar Association has been working hard to foster use of the International Court of Justice—the so-called World Court—for arbitration of many more disputes among nations. The bar association has a strong ally in Vice President Nixon. He advocated greater use of the World Court in an

address to the American Academy of Political Science last April, and only recently he set forth the same idea when the University of Chicago Law School's new buildings were dedicated.

It is to be hoped that outstanding Americans in increasing numbers will join this effort to make the World Court a really effective tribunal. It can be so only if the great nations, notably including the United States, state their firm adherence to the concept that world affairs must be guided by law.

[From the Chicago (Ill.) News, Oct. 15, 1959]

STILL A DISTANT GOAL—RULE BY WORLD LAW GETS ANOTHER PUSH FORWARD

The road to peace is the road of law, in the view of the American Bar Association, and it wishes the United States would get the roadblocks out of the way. The ABA believes other countries would clear their own barriers if we acted first.

This point of view is powerfully espoused in a report by a special ABA committee urging a stronger and more effective World Court. The committee argues that reservations as to the Court's jurisdiction are doing harm to this country's interests.

Specifically, the bar group asks repeal of the Connally amendment, tacked on to the 1946 resolution whereby the United States agreed to refer disputes to the International Court of Justice.

The amendment permits the United States to block any or all Court action by contending that a dispute to which it is a party is a domestic matter. Other countries have followed the U.S. lead, with the result that few cases ever reach the World Court at all.

The ABA has enlisted some powerful support in its campaign to strengthen international legal channels. Vice President Nixon came out strongly for the program last April, and added a suggestion of his own.

He proposed that future treaties to which the United States is a party contain a clause committing the signatories to submit to the World Court any disagreements arising from the treaty. They would also agree in advance to be bound by the Court's decision.

Nixon hinted at that time that the administration would back legislation to repeal the Connally amendment, but the support has not yet developed. Senator Hubert Humphrey, Democrat, of Minnesota, introduced a repeal resolution in the last session, but it got little attention.

The new ABA report, by stressing the national self-interest, may have more effect than treaties devoted solely to the ideal. Since the United States has a larger foreign stake than any other nation, it stands to lose more than it can gain by ignoring the Court.

Opponents will point out, no doubt, that laws are not the same everywhere, and that American standards of equity would not necessarily apply to international disputes, either economic or political.

Nevertheless, the lawyers are ready for "a dramatic step" to show that this country "in deeds as well as words is ready to lead the free world toward the rule of law."

It will obviously take a lot of leading, as well as a lot of following, before a stable body of international law replaces the catch-as-catch-can rules that now prevail when nations quarrel. But since force as the ultimate arbiter has reached the H-bomb and missile level, the alternative—allowing an international court to settle disputes—looks better all the time.

[From the Harlan (Ky.) Enterprise, June 14, 1959]

PETER EDSON'S WASHINGTON NEWS NOTEBOOK—COULD WORLD COURT SIT ON BERLIN?

(By Peter Edson, NEA Washington correspondent)

WASHINGTON (NEA).—American Bar Association's exploration of the idea to give the United Nations International Court of Justice a greater role in preserving peace raises a question.

It is whether the so-called World Court could settle the Berlin dispute now before the Big Four Foreign Ministers, playing musical chairs in Geneva.

Some international lawyers who have examined the thick file of documents giving the United States, Britain, and France their sectors of Berlin say that these Western Powers have clear access rights to the city at all times.

Soviet Russia and its East German satellite say such legal access rights do not exist.

Lawyers consider this a clear case which the World Court could decide by simply examining the contracts.

It is admitted, however, that there are other factors involved than a mere interpretation of documents.

These are foreign policy issues of power politics and national defense. Judges can't settle them as questions of law. They are subjects for the determination of heads of government and diplomats in international negotiations.

It is for these reasons that supporters of the plan to give the World Court more business do not say that it offers the perfect solution for all the world's troubles.

They don't want to claim too much for the World Court's capabilities. To do so would be a disservice to the cause of world peace.

As matters stand now, the Russians would not accept World Court jurisdiction over the Berlin issue.

This is what happened when the United States brought suit in the World Court to collect \$1.3 million from the Russians for shooting down a U.S. plane over the Sea of Japan.

Persuading the Russians to accept Western ideas of international law and of what issues can be settled by trial is one of the main obstacles to giving the World Court a greater role in deciding disputes between nations.

CONFLICTING LEGAL SYSTEMS

Marxist theories of law are at complete variance with Western concepts. The Russians nevertheless insist that theirs is a government of laws. The problem is to find common ground for the conflicting legal systems.

Charles S. Rhyne of Washington, chairman of American Bar Association's Committee on World Peace Through Law, is one of the leaders of this movement. As past president of ABA, he traveled 250,000 miles, visiting 40 countries to interest international lawyers in the crusade.

ABA's board of governors will soon consider a Rhyne committee recommendation for a world conference of lawyers in 1961. It would be preceded by regional meetings of lawyers in Latin America, Europe, Asia, and Africa in 1960.

Iron Curtain country lawyers would be invited to all of those conferences. If they won't come, the plan is to go ahead with free world conferences anyway.

For if nations outside the Red bloc make increased use of international courts to settle their disputes, it is believed that Russia's propaganda claim to having a government of laws will be destroyed.

Rhyne admits that world acceptance of court settlement for international disputes may take decades.

ACCEPTED BY 36 NATIONS

Only 36 nations now accept World Court jurisdiction. Even the United States does that with reservations.

This country does not recognize the Court's authority over matters which are of domestic jurisdiction, "as determined by the United States of America."

This is the so-called Connally reservation of 1946. President Eisenhower told Congress in January that he would recommend its repeal. So far nothing has happened.

Senator Hubert Humphrey (Democrat, of Minnesota) has introduced a resolution to repeal it. But that is likewise stalled.

There is no thought of surrendering U.S. sovereignty over domestic issues. But existence of the Connally reservation is believed to be one of the main reasons why the World Court has not been of more service.

In its 13 years of existence the 15 World Court Justices, paid \$20,000 a year plus \$4,000 expenses, have heard only 10 cases.

[From the St. Louis (Mo.) Post Dispatch, Oct. 15, 1950]

ELIZABETH ROOSEVELT—INTERNATIONAL DISPUTES

WASHINGTON, October 15.—I was glad to read that the American Bar Association, through one of its committees, has urged that we take the lead in making the World Court a real court.

When we adopted the Connally reservation we stipulated that compulsory jurisdiction on the part of the World Court should "not apply to . . . disputes with regard to matters which are essentially within the domestic jurisdiction of the United States as determined by the United States."

This encouraged other countries to do the same, and so comparable reservations were made by France, Israel, Pakistan, South Africa, and others. The United Kingdom and some British Commonwealth nations have made a slightly different reservation. Not allowing the Court to really have jurisdiction on a compulsory basis made it in many cases valueless.

We now know that it is important to have an international court that functions. If we are going to live under law and not use force, this is an essential part of the whole business of peaceful existence with other nations. Disarmament cannot come until at least the machinery is in motion for settling differences by law and an international court is an essential part of this machinery.

Therefore, I hope very much we will decide in the next Congress to repeal the Connally amendment. Citizens who believe this is essential should, through the organizations to which they belong, make their wishes known to their Congressmen and Senators.

[From the Milwaukee (Wis.) Journal, Nov. 3, 1959]

UNITED STATES INCONSISTENT IN VETOING INTERNATIONAL COURT POWERS

Again comes a jolting reminder that in the effort to bring a rule of law to this unruly world, the United States is not in court with altogether clean hands.

The chiding voice is that of a committee of the American Bar Association. Its target is the Connally reservation to the 1946 Senate resolution accepting for the United States the jurisdiction of the International Court of Justice at The Hague.

The World Court statute provides that the Court will not consider disputes regarding matters "essentially within the domestic jurisdiction" of any country. The Connally amendment says this country will decide what is within domestic jurisdiction. It gives us a veto power over any suit brought against us.

According to the bar group, the Connally reservation is seriously injuring both the cause of international justice and the U.S. position of world leader. It has, says the group, reduced the Court's effectiveness. It has encouraged other nations to make like reservations. It has been used by the Communists as an argument for not accepting the Court's jurisdiction.

It has provided the excuse for saying "that not even the United States, so-called leader of the free world, is wholehearted in its support of international judicial processes." It works to discourage, not advance, effective enforcement of international agreements, a goal particularly vital to this country because of its international commitments, world trade, and foreign investment.

Numerous organizations and individuals have called for repeal of the Connally reservation in recent years. President Eisenhower, Vice President Nixon and Attorney General Rogers have made speeches along that line. Nixon has proposed that in all new treaties we write clauses accepting jurisdiction over disputes by the International Court. But despite all the fine words, the administration has sent no specific repeal proposals to Congress.

There are now 38 nations which have accepted, without any reservations, the jurisdiction of the International Court. There is little doubt but that if the United States were to do likewise all but the Communist nations would soon fall in line. And the pressure on the Communists to do likewise would be great.

In the convincing words of the bar committee: "Withdrawal by the United States of its self-judging domestic jurisdiction reservation would be a major, practical, and dramatic step toward the goal of 'the rule of law among nations.'"

[From the Havre (Mont.) Daily News, 1959]

GIVE THE WORLD COURT THE STRENGTH IT DESERVES

International law is a fascinating subject which is difficult for most laymen to fathom and its importance as to the future of nations is too often overlooked by members of the legal profession. Through the World Court, certain important problems have been worked out to the satisfaction of all concerned and we maintain that the court has its place in the sphere of the maintenance of harmony among nations.

Now the World Court is suffering because the United States has evidently chosen to limit its action.

When the Connally amendment became law we were apprehensive because while we saw that some kind of an effort was being made to prevent our country becoming involved in unfavorable alliances, the effectiveness of the court in handling those cases which could be magnified and lead to a breach in international relations, would be greatly reduced.

President Eisenhower in his state of the Union message indicated that he was not satisfied with the Connally amendment and that a change might be advisable.

As we recall, Senator Humphrey introduced a resolution calling for the repeal of the Connally amendment and the State Department endorsed the resolution calling attention of the Senate Foreign Relations Committee to the Humphrey move.

The World Court provides judicial processes against the use of force but the Connally amendment backs the right of the United States to decide for itself in each case whether any action placed before the World Court is within its domestic jurisdiction.

Naturally that means that any country against which Uncle Sam would bring a case could say, oh no you don't, this case is strictly domestic, therefore no World Court for us.

It has been suggested in several quarters that Mr. Eisenhower make it a point right now to inform our allies that the United States is going to do something about removing the hamstringing Connally amendment and work for the Court's compulsory jurisdiction.

Incidentally, it would not be unwise to let Premier Khrushchev know where we stand on the World Court. Should the President pass over the importance of the Court toward maintaining international peace through the handling of those cases which untouched could be the fuse to international conflagration, the visiting Russians will get the impression that we treat justice lightly.

The administration and the Foreign Relations Committee should try to get together as quickly as possible and work for immediate passage of the Humphrey resolution. Should they fail to get to first base Mr. Eisenhower should not hesitate to break the stalemate.

This matter looks to us as one which deserves something more than casual treatment. World justice is too large to pass by as being inconsequential when we claim to be advocates of that which is fair in settling disputes which unresolved become the basis for devastating wars.—HCW.

[From the Claremont (N.H.) Eagle, 1959]

STRENGTH FOR WORLD COURT

The World Court would be made a more effective umpire in international disputes if a reform movement headed by a special committee of the American Bar Association and supported by President Eisenhower and Vice President Nixon takes hold. The argument of the chairman, Charles S. Rhyne, a former ABA president, is that the International Court of Justice of the United Nations, to give the tribunal at The Hague its proper name, has become "a forgotten forum where judges are paid \$20,000 each per year to waste their time waiting to decide cases that are never filed."

The chief target of the reformers is the so-called Connally amendment to the 1946 resolution by which the U.S. Senate gave its advice and consent to a declaration by President Truman that the United States accepted compulsory jurisdiction of the Court.

The Connally amendment was in effect a reservation. It added the words "as determined by the United States" to the language of the resolution which already had excluded from compulsory jurisdiction "matters which are essentially within the domestic jurisdiction of the United States."

"This reservation," Rhyne declared April 5, in discussing a series of conferences sponsored by his committee, "violates the age-old principle that no man should judge his own case." President Eisenhower in his state of the Union message this year had proposed reexamination of U.S. relations with the Court.

Vice President Nixon on April 13 told the American Academy of Political Science that the administration would shortly recommend to Congress that the 1946 agreement be modified. Nixon said the U.S. reservation is "one of the major reasons for the lack of judicial business" before the Court. Senator Hubert H. Humphrey, Democrat, of Minnesota, had made the same point in introducing a resolution, March 24, that would rescind the reserve clause, which had resulted in a "sorry record" of only 10 cases decided by the World Court in 13 years.

Nixon's sponsorship was warmly welcomed by U.N. Secretary General Dag Hammarskjöld, speaking in behalf of the international security organization. At a press conference of April 16 Hammarskjöld hailed portions of Nixon's speech in which the Vice President had specified that the World Court should become the arbiter in East-West disputes, replacing the international "balance of terror" with the "rule of law."

The ABA group points out the Connally amendment works both ways. Thus the Court in 1956 was forced to announce that both Soviet Russia and Czechoslovakia had refused to let it rule on claims arising from the downing of U.S. planes.

The move against the reservation would be only the first step in beefing up the Court. A further proposal is to move the tribunal from the Netherlands to New York. And the Court would be urged to hear complaints in or near countries in which they arise. Both proposals are aimed at making international justice more accessible as well as more binding.—EDITORIAL RESEARCH REPORTS.

STATEMENT OF DR. W. O. H. GARMAN, THE ASSOCIATED GOSPEL CHURCHES, CHRISTIANS FOR ACTION, AND CALLENDER MEMORIAL CHURCH, WILKINSBURG, PA., JANUARY 27, 1960

We are opposed to the repeal of the Connally amendment for the following reasons:

I. FIRST WE ARE OPPOSED AS BIBLE BELIEVING CHRIST HONORING CHRISTIANS

As Christians our first and most sacred allegiance is to our Lord and Saviour Jesus Christ, and our second, to the United States of America. We owe no allegiance to United Nations, nor to its so-called International Court of Justice.

As students of the infallible word of God, the Holy Scriptures, we are aware that the Bible predicts in many places that in the last days of the age in which we now live that there will be one universal and absolutely totalitarian religion-world-state presided over by the worst of all tyrants, the anti-Christ, whom Christ will destroy at His coming, and we believe that all this centralization of power in the United Nations, its International Court of Justice, etc., is but helping to prepare the way for the manifestation of this man of sin, and we as Christians want no part in it, and we seek to warn and deter our Nation from taking further calamitous action. See Matthew 24: 4-25; Psalm 2; Thessalonians 5: 1-4; II Timothy 3: 1-5; II Thessalonians 2: 3-12; Revelation 13, 16: 13-16; 19: 11-21.

As Christians we believe the many predictions that Christ and the apostles made, as recorded in the Bible, that wars and rumors of wars will continue to mark this age down to the time of Christ's return, that false teachers would abound, that evil men and seducers will wax worse and worse, deceiving and being deceived, that when they cry peace and safety sudden destruction cometh on them as travail upon a woman with child, and that this age will end in the unprecedented period of worldwide suffering called in Scripture the great tribulation, and, that there will be no peace until Christ, the Prince of Peace, returns, puts down all opposition, rules with a rod of iron, as Lord of Lords and King

of Kings here on earth. The whole foundation structure, goals and aims of United Nations, its International Court, "world peace through law" totally disregards and abnegates the teaching of the Bible just enumerated.

As Christians we fear for our safety, and the continuance of our cherished liberties if we are ever placed under the jurisdiction of an alien, unfriendly, unsympathetic international court. We believe that the Connally amendment helps guarantee and safeguard the rights and privileges we have enjoyed under the Constitution of the United States of America, and that the repeal of this amendment would jeopardize all these rights, privileges and liberties.

II. SECONDLY WE ARE OPPOSED AS CITIZENS SINCE TO OUR WAY OF THINKING THE WHOLE MATTER IS UNCONSTITUTIONAL AND NOT TO THE BEST INTEREST OF AMERICA

Article III, section I of our Constitution provides that, "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." It further provides that the judges of these courts "shall hold their offices during good behavior * * *". To turn the judicial powers of America over to an alien, International Court, would be a violation of the Constitution, and a transference of the powers resident in Congress to an alien group.

The people of America and all our foreign and domestic affairs would be placed in the hands of an alien court, the International Court of Justice, in which the United States is already outnumbered 2 to 1 by the Communists and would therefore in all these matters be outvoted and at their mercy.

It is not in the best interests of our people, nor even of the backward oppressed areas. It would deprive us of our liberties, and further entrench Communist conquest and fasten their grip more relentlessly on enslaved peoples. It would jeopardize every U.S. investment and possession abroad, and make possible the confiscation of the same by Communist agitators.

Americans tried before United Nations, International Court of Justice, could under its present setup be tried in secret, without trial by jury, without aid of defense counsel, without fair presentation of evidence, without right of appeal, at any place or time the court may decide. All of this is in violation of our constitutional rights and privileges.

It is feared that America would lose control over civil rights, the destiny of its troops abroad, immigration and emigration, health, economics, education, trade and tariffs, post office, international banking for reconstruction, mental health, the expenditure of its funds abroad, and thereby we be thoroughly controlled by aliens and brainwashed at their will.

It would involve the surrender of our sovereignty, and further surrender to our Communist foes, who would advantage the most by repeal.

It would hasten Russia's conquest, defeat, and enslavement of the United States of America and the free world which she hopes to attain without fighting.

STATEMENT OF EMILIO S. IGLESIAS, CHAIRMAN, NATIONAL FOREIGN RELATIONS COMMISSION, THE AMERICAN LEGION, JANUARY 27, 1960

Mr. Chairman and members of the committee, the American Legion is opposed to Senate Resolution 94 because we believe its enactment would gravely endanger the sovereignty of the United States and our constitutional form of Government.

For many years we have advocated a constitutional amendment which would restrict the use of the treaty power of the Executive as an instrument of internal legislation. Now we have before us a proposal which, in our opinion, would go even further. It would place the power to affect our internal legislation in the hands of an international tribunal. Because the constitutional amendment, above referred to, and Senate Resolution 94 are so closely allied, we must address ourselves to both for the same principles and factors are pertinent to each.

Article VI of the Constitution provides in part: "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be

bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding."

In the early days of our existence, the problem which we face today did not exist for two reasons. First, it was generally accepted then that a treaty could not supersede the Constitution. Also, we were not confronted, as we are today, with the difficulty of distinguishing between matters which were international in nature and those which were purely domestic. Until relatively recent times, treaties were negotiated between two sovereigns on matters which were traditionally international in nature. Thus, the treaty power of the Executive posed no serious threat to our system of government.

Today this is not the case. Let us briefly set forth the basis for our opinion. In 1920, the Supreme Court deviated for the first time with respect to its doctrine of the supremacy of the Constitution over treaties in the case of *Missouri v. Holland* (252 U.S. 416). This case concerned a treaty with Great Britain, acting for Canada, regulating the killing of migratory birds. The Supreme Court said in effect, that Congress could enact legislation pursuant to an international agreement which it could not enact pursuant to the Constitution. This was the real beginning of the problem.

In *United States v. Curtiss-Wright Corporation*, 1936 (290 U.S. 304) the Supreme Court said that the President is "the sole organ of Government in the field of foreign relations," "he manages our concerns with foreign nations and must necessarily be most competent to determine when, how, and upon what subjects negotiations may be urged with the greatest prospects of success. For his conduct he is responsible to the Constitution."

Commenting on the general statement that "the Federal Government can exercise no powers except those specifically enumerated in the Constitution, and such implied powers as are necessary and proper to carry into effect the enumerated powers," the Court said that this statement "is categorically true only in respect to our internal affairs." With respect to the Federal Government's powers of external sovereignty, the Court said that they did not depend upon the affirmative grants of the Constitution.

In *United States v. Pink*, 1942 (315 U.S. 303) the Supreme Court extended the decision of *Missouri v. Holland* to Executive agreements which do not need ratification by the U.S. Senate. This case concerned the Roosevelt-Litvinov Agreement which had not been approved by either House of Congress. This agreement provided for the distribution of certain assets of a Russian insurance company, held in a New York bank at the time of the Russian revolution, in a manner contrary to the laws of the State of New York. The Supreme Court held that the law of New York must bow to the provisions of the Executive agreement.

We believe that the foregoing cases (and there are others which could be cited) adequately illustrate a present situation which the American Legion views as dangerous. It is dangerous because we cannot be certain that we will be able to maintain our constitutional form of government, as we have known it throughout history. We believe this because, the situation which exists today apparently makes it legally possible to have our local and Federal laws, our individual constitutional guarantees, and perhaps even our Constitution, altered or abridged by the exercise of the treaty power. And further it is extremely dangerous when this may be accomplished even without the advice and consent of the U.S. Senate through the use of Executive agreements. Because the American Legion is alarmed over this situation we have supported a constitutional amendment limiting the treaty power of the Executive when it becomes an instrument of internal legislation.

Senate Resolution 94 would aggravate the situation. It seeks to compel the United States to consent to the compulsory jurisdiction of the International Court of Justice without reserving the right to determine for ourselves whether or not the issue involved is international in nature or purely domestic. As is well known, this right was reserved to the United States by the so-called Connally amendment to Senate Resolution 106, 78th Congress. By the terms of Senate Resolution 196 the President was authorized to deposit with the United Nations our consent to the compulsory jurisdiction of said Court of international issues arising with other States which had similarly accepted compulsory jurisdiction.

Our consent to the compulsory jurisdiction of the Court was given pursuant to the provisions of section 2, article 38, of the statute of the International Court of Justice, which is a part of the Charter of the United Nations.

Section 2, article 86 of the statute also grants jurisdiction to the Court of all legal disputes concerning:

- (a) The interpretation of a treaty;
- (b) Any question of international law;
- (c) The existence of any fact which, if established, would constitute a breach of an international obligation;
- (d) The nature or extent of the reparation to be made for the breach of an international obligation.

As can be seen, the Court has jurisdiction over an extremely wide variety of subjects. It appears to us it would be impossible for anyone to foresee all the issues which might well become the subject of a dispute. And certainly no one person can determine what the Court's decision would be on any subject with respect to whether or not it was international in nature or purely within the domestic jurisdiction of the United States. We in the American Legion firmly believe that herein lies the real danger.

If we relinquish this right and permit the Court to make the decision, I am sure that everyone concerned, pro or con, appreciates what the possible legal consequences might well be. In order that there will be absolutely no doubt as to what the American Legion believes the results would be, please permit me to state them briefly. As I mentioned earlier, the Constitution of the United States provides that the laws of the United States enacted in pursuance thereof, and treaties duly entered into, shall be the supreme law of the land.

The judicial power of the United States is vested in the Supreme Court and such lesser courts as the Congress may from time to time authorize. The laws of the United States and the provisions of the treaties are binding upon the judges of the States, notwithstanding the respective State constitutions. As interpreted by the Supreme Court, the laws of the United States enacted pursuant to the Constitution are limited by its provisions; its circumscribes them so to speak. They may not violate the Constitution. But with treaties and Executive agreements, this is not the case. They are not limited by constitutional provisions. Since the Supreme Court derives its existence and power from the Constitution, its decisions in turn also become a part of the supreme law of the land.

The law is also comprised of statute law and decisional or case law as laid down in decisions of the Supreme Court and the lesser Federal courts. Their decisions teach us what the "common law" is and what the enactments of Congress mean. So, because of the judicial power of the United States having been invested in the Supreme Court and the several lesser courts their decisions have the full force and effect of law. As time passes, they may change the laws. But the main point to keep in mind is that the supreme source of this power and authority is the Constitution.

However, the Supreme Court has also said that treaties entered into under the authority of the United States, which are also the supreme law of the land, may transcend constitutional limits. Therefore, would we be wrong in thinking of them as the "super-supreme law" of the land? In any event, let us pursue our argument to what we believe is a logical conclusion.

By becoming a signatory to the United Nations Charter and the statute establishing the World Court, we have made it the supreme law of the land. When we submit to the jurisdiction of the World Court in a case, what is the effect of the Court's judgment? As a matter of law, is not its judgment as binding upon us as a decision of our own Supreme Court?

In his appearance before the committee on January 27, 1960, it was my impression the Attorney General voiced the opinion that the judgments of the World Court would be binding upon us.

Now the sole issue presented by Senate Resolution 94 is: Are we going to take a chance on making it legally possible for the World Court to render decisions binding upon our laws, our constitutional guarantees, in short our domestic affairs? The American Legion is not prepared to gamble for such high stakes.

The proponents of Senate Resolution 94 undoubtedly are motivated by high ideals and good faith. They are sincerely attempting to establish a rule of law for the world to live by as a substitute for force. But we are afraid that they have become somewhat carried away from reality by their ideals. They desire to establish a "rule of law" for nations to abide by. In explaining this purpose, the Honorable Christian A. Herter, Secretary of State, when he appeared before the committee on January 27, 1960, referred to a statement made by the late John Foster Dulles, a former Secretary of State, as follows:

"We in the United States have from the very beginning of our history insisted that there is a rule of law which is above the rule of man. That concept we derived from our English forebears, but we, as well as they, played a part in its acceptance.

"Thus, since its inception, our Nation has been dedicated to the principle that man, in his relationship with other men, should be governed by moral, or natural law.

"We now carry those concepts into the international field. We believe that the results thus obtainable, though not perfect, are nevertheless generally fair, and that they are preferable to any other human order that can be devised.

"A most significant development of our time is the fact that, for the first time, under the Charter of the United Nations, there has been a determined effort to establish law and justice as the decisive and essential substitutes for force."

"The American Legion concurs with this ideal. When this statement was made is not apparent from the Secretary of State's remarks. We must, however, point out that the statement is directed to the rule of law, i.e., rule by law (not force). But to have rule by law, it is imperative to have rules of law. And our basic concept is that these rules must be well defined so that men who live under them can know what they are. And, speaking upon this subject, the late Honorable John Foster Dulles also had this to say:

"Article 38 of the statute (i.e., statute of the International Court of Justice) goes on to recognize as international law not merely international conventions, but international custom, general principles of law recognized by civilized nations, and, the teachings of the most highly qualified publicists of the various nations. If the applicable rule of international law is so uncertain that resort must be had to alleged custom, teachings, etc., then the Court can scarcely avoid indulging in a large amount of judicial legislation or political expediency."

Speaking upon the subject with which we are confronted, the late Mr. Dulles also said: "Compulsory jurisdiction of the Court should not extend to matters which are essentially within the domestic jurisdiction of the United States." And he further commented: "Article 2(7) of the charter, among other things provides, in substance, that nothing contained in the present charter shall require the members to submit to settlement under the charter matters which are essentially within the domestic jurisdiction of any state. The declaration under the statute (i.e., our declaration to consent to compulsory jurisdiction) should preserve, and not seem to waive, that limitation" (Congressional Record of Aug. 1, 1946, vol. 92, pt. 8, p. 10623).

From the foregoing it is not clear whether or not Mr. Dulles favored the Connally reservation, but it is very apparent that he doubted the Court would function in a purely judicial manner.

But even if the Court did limit itself to purely judicial decisions, the danger to our domestic affairs is still present. Dr. Herbert W. Briggs, professor of international law from Cornell University, during his appearance before your committee on January 27, 1960, made this quite clear. If Senate Resolution 94 is adopted we will grant the Court the power to determine whether an issue is international in nature or within our domestic jurisdiction. What criteria will the Court use in making its determination? What is its definition of an international issue? Dr. Briggs said whether or not a matter is domestic or international is relative. Do we know what this means? Does the Court agree? Dr. Briggs also said that most matters are domestic until they become international as the subject matter of a treaty. This is not too vague, but he added, it also could be international if it is a matter upon which a nation has incurred an international liability; and he conceded it could become international for other reasons. The case of *Missouri v. Holland*, *supra*, concerning migratory birds within the State of Missouri illustrates how a matter which traditionally has been considered "domestic" can become "international" overnight.

The foregoing, coupled with the myriad of issues which might well fall within the vague criteria touched upon by Dr. Briggs, constitutes too much of a gamble for the American Legion when our property and our cherished liberties are at stake.

As far as the American Legion can determine, the proponents of Senate Resolution 94 support their position on political and diplomatic grounds. They do not dispute our legal analysis. They merely say that our fears are unfounded because they don't think or believe what might happen, will happen. This alleged argument would seem to defeat their major premise. They seek to establish a "rule of law" but apparently admit they are relying upon a "rule of

men" for its success. At least as we stand now, the U.S. position is out in the open and aboveboard.

Can we seriously believe that enactment of Senate Resolution 94 will enhance our position in the world by demonstrating our willingness to take the lead and subject ourselves to the jurisdiction of the Court without the Connally reservation when as a matter of record we do it with the knowledge that we can always veto a judgment against us in the Security Council or give our 6 months' notice and pull out?

Our present policy is clearly within our rights under the U.N. Charter. Will we not serve our good name and reputation better by maintaining our present policy until such time as the law to which we are asked to subject ourselves is better defined, (making clear that our hesitation is not due to our lack of desire to cooperate, but because we intend to abide by our commitments once made) rather than making a grand, but premature "swan dive into the pool," but carrying with us a concealed ladder upon which we can climb out if things don't go well for us?

I do not intend to convey the impression that the American Legion's position in opposition to Senate Resolution 94 is or will be temporary in nature. That, I cannot predict. But we do say that political expediency as a basis for the repeal of the Connally reservation is not well taken.

Our view may seem a little extreme to some, but the foundation has been built and a few building blocks have already been laid. We certainly do not wish to see our governmental house patterned from an architecture foreign to that envisioned by our Founding Fathers and we most certainly do not wish to entrust part of its construction to foreign craftsmen.

Thank you, Mr. Chairman, for granting us the privilege of appearing before your distinguished committee in connection with this vital problem.

Wherefore, in view of the foregoing, the American Legion respectfully requests the Senate Foreign Relations Committee to reject Senate Resolution 94.

STATEMENT OF JOHN R. HOLDEN, LEGISLATIVE DIRECTOR, AMVETS, JANUARY 20, 1960

Mr. Chairman and members of the committee, two of the principal reasons for AMVETS' existence are to safeguard the principles of freedom, liberty, and justice for all and to promote the cause of peace and good will among nations. We have analyzed the provisions of Senate Resolution 94 and have concluded that its adoption by the Senate will serve these worthy purposes. We, therefore, support Senate Resolution 94.

This measure would lend Senate advice and consent to the revision of U.S. acceptance of the jurisdiction of the International Court of Justice by eliminating the self-judging aspect only of our reservation of domestic matters from the Court's jurisdiction.

In 1946, when the United States accepted the jurisdiction of the Court, one condition specifically reserved from the Court's jurisdiction "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America."

The final eight words of this reservation, "as determined by the United States of America," have had the effect of the United States reserving to itself a veto power with respect to the jurisdiction of the International Court of Justice. It clearly violates the time-honored precept that no man should be the judge in his own case.

Implying as it does, distrust of the Court, this simple amendment has had a detrimental effect upon the operations of that high body. It tends to create doubt among the family of nations of our declared intent to accept the jurisdiction of the Court. Other nations, following the action of the United States in adopting a self-judging reservation, have taken similar restrictive measures thus rendering the International Court a hollow and ineffective instrument for the adjudication of international disputes.

The adoption of Senate Resolution 94 will not in any manner alter our specific reservation from the Court's jurisdiction of disputes relating to domestic matters. Article II of the United Nations Charter and article 36 of the statute of the International Court provide guarantees against domestic interference by the

International Court of Justice. Article II states: "nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require such members to submit such matters to settlement under the charter." Article 36 of the statute effectively limits Court jurisdiction to international matters.

It is in the great tradition of his country that the regulation of man, and his institutions, is best accomplished through the due process of law. No court can administer the law effectively when hobbled by those to which the jurisdiction of the law may apply.

AMVETS feel that only with the removal of the so-called Connally amendment as proposed by Senate Resolution 94, and with this the complete and unreserved backing of the International Court of Justice by the United States will the Court assume the stature it deserves. Through an honest and unequivocal approach and an acceptance of the International Court we will again be taking a meaningful step in recognition in the eyes of the world that the rule of law is the only civilized way to order, not only our own lives and our local governments, but also those governments in the world who would agree that law is the only alternative to chaos. We, therefore, strongly urge the favorable reporting by this committee of Senate Resolution 94.

STATEMENT OF PHILIP C. JESSUP, PROFESSOR OF INTERNATIONAL LAW AND DIPLOMACY, COLUMBIA UNIVERSITY, FEBRUARY 12, 1960

This statement is respectfully submitted in favor of Senate Resolution 94 for withdrawal of the self-judging aspect of the reservation attached by the United States in 1946 to its acceptance of the jurisdiction of the International Court of Justice.

I am Hamilton Fish professor of international law and diplomacy at Columbia University, and I submit this statement as an individual who over some 35 years has taken a special interest in the question of U.S. support for the International Court, both as it is now constituted and in the form of its predecessor, the Permanent Court of International Justice. In 1929 I served as assistant to Senator Elihu Root in his negotiations to facilitate the adherence of the United States to the Permanent Court of International Justice.¹ The issues which were current 30 years ago were to a large extent the result of the fact that the United States was not a member of the League of Nations, with which the former World Court was associated. The United States is now of course a member of the United Nations of which the International Court of Justice is "the principal judicial organ" as provided in article 92 of the charter of the United Nations, a treaty duly ratified by the United States. Every administration, whether Republican or Democrat, which has been in office since the first World Court was established in 1920, has favored American support for the Court.

In July 1946, a subcommittee of the Senate Committee on Foreign Relations held hearings on a proposal that the United States should file a declaration under article 36(2) of the statute of the International Court of Justice, the so-called optional clause, whereby the United States would agree that in the future it would submit to the jurisdiction of the Court cases falling within the legal categories which are listed in that article. It seems useful to recall that the subcommittee, while approving a reservation excluding domestic questions from the proposed declaration, rejected a proposal advanced in a memorandum submitted by Mr. John Foster Dulles which would have had the effect of the "self-judging" clause ("as determined by the United States of America") which was later adopted. The subcommittee explained (S. Rept. 1835, p. 5., 79th Cong. 2d sess.):

"* * * the proposed declaration shall not apply to matters which are essentially within the domestic jurisdiction of the United States. A provision similar in principle is found in article 2, paragraph 7, of the charter, providing that nothing in the charter shall authorize the organization to intervene in essentially domestic matters. The committee feels that the principle is also implicit in the nature of international law, which under article 38, paragraph 1, of the statute, it is the duty of the Court to apply. International law is, by definition, the body of rights and duties governing states in their relations with each other and does not, therefore, concern itself with matters of domestic jurisdiction. The question

¹ See Jessup, "The United States and the World Court," foreword by Elihu Root (1929).

of what is properly a matter of international law is, in case of dispute, appropriate for decision by the Court itself, since if it were left to the decision of each individual state, it would be possible to withhold any case from adjudication on the plea that it is a matter of domestic jurisdiction. It is plainly the intention of the statute that such questions should be decided by the Court, since article 36, paragraph 6, provides:

"In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."

"It was also brought to the attention of the subcommittee that a number of states, in filing declarations under the statute of the Permanent Court of International Justice, interposed reservations similar to that of the resolution under consideration, but in no case did they reserve to themselves the right of decision. The committee therefore decided that a reservation of the right of decision as to what are matters essentially within the domestic jurisdiction would tend to defeat the purposes which it is hoped to achieve by means of the proposed declarations as well as the purpose of article 36, paragraphs 2 and 6, of the statute of the Court."

The full committee reported the resolution to the Senate as recommended by the subcommittee on July 24, at the very end of the session. This International Court resolution was debated on July 31 and August 1 and was voted on August 2, 2 hours before the Senate adjourned sine die. It was during the pressures of this hurried debate that the considered recommendation of the Foreign Relations Committee was amended by inserting the "self-judging" clause, "as determined by the United States of America." Subsequent events and consideration indicate that the addition of this clause, which would now be repealed by the passage of Senate Resolution 94, has been and is disadvantageous to the United States in terms of national short-range and long-range interests.

THE SHORT-RANGE INTERESTS OF THE UNITED STATES ARE IMPAIRED BY THE SELF-JUDGING CLAUSE

Long-term private American foreign investments amount to over \$40 billion. They run the risk of loss through governmental action in other countries. The United States is precluded by the charter of the United Nations from using its Armed Forces for the protection of such investments. It must rely upon peaceful processes and upon the assertion of rights under international law. This fact is recognized in section 115(b)10 of the Economic Cooperation Act (62 Stat. 137) which provides that every aid agreement with a foreign country must include a provision "submitting for the decision of the International Court of Justice or of any arbitral tribunal mutually agreed upon any case espoused by the U.S. Government involving compensation of a national of the United States for governmental measures affecting his property rights, including contracts with or concessions from such country." Such agreements including such a provision have been concluded with Austria, Belgium, Denmark, France, Greece, Ireland, Italy, Luxembourg, Netherlands, Norway, Sweden, Turkey, Great Britain, China, and Spain. The provision in question in each case contains language to this effect:

"It is understood that the undertaking of each Government in respect to claims espoused by the other Government pursuant to this paragraph is made in the case of each Government under the authority of and is limited by the terms and conditions of such effective recognition as it has heretofore given to the compulsory jurisdiction of the International Court of Justice under article 36 of the statute of the Court."

In other words, the U.S. reservation is applicable. Assume that the Government of the United States believed that Norway had without legal justification deprived an American national of his property in Norway. Norway has accepted the optional clause of the Court statute with no reservation other than the condition of reciprocity which is implicit in the text of article 36 of the statute. If the United States brought suit against Norway in the International Court, Norway would merely need to call attention to the reservation of the United States; to state that on the principle of reciprocity Norway would invoke the U.S. reservation; and therefore to assert that the Court had no jurisdiction to hear the claim since it involved a matter "essentially within the domestic jurisdiction of Norway as determined by Norway." The International Court would hold that it had no jurisdiction. It has so held in the comparable case of *France v. Norway* where France brought suit on an alleged breach of obliga-

tion on Norwegian bonds, France having copied the self-judging aspect of the domestic jurisdiction reservation of the United States. (*Case of Certain Norwegian Loans*, Judgment of July 6, 1957; I.C.J. Reports 1957, p. 9.) Some of the Judges of the International Court are of the opinion that the self-judging reservation is, as the Senate subcommittee suggested in 1946, a violation of paragraph 6 of article 36 of the statute which provides: "In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court." The same opinion was expressed by Senator Pepper in the Senate debates of July 1946. Under this view, the entire declaration under the optional clause may be held invalid. In any event, the United States is unable to sue any other state in the International Court unless that state should agree ad hoc to such suit. Accordingly the United States has not secured the protection which was contemplated by the Congress in enacting section 115(b)10 of the Economic Cooperation Act. It cannot secure such protection unless it repeals the self-judging clause.

Throughout its history, the United States has sought the settlement of international claims through various types of international adjudication according to law. The need for judicial settlement is greater than ever since the establishment of the United Nations, but the United States has legislated itself out of the right to invoke the jurisdiction of the International Court even as against those other states which have freely accepted that jurisdiction.

THE LONG-RANGE INTERESTS OF THE UNITED STATES ARE IMPAIRED BY THE SELF-JUDGING CLAUSE

It is in the long-range interests of the United States to promote the rule of law generally among nations beginning with those nations associated with us in the North Atlantic Treaty Organization and in the Organization of American States and extending to other states in Europe, in the Middle East and Asia, and in Africa. It is the constant and proper policy of the United States to bring home constantly to the attention of the governments and peoples of other countries that the actions of the Communist nations belie their protestations that they are the nations of peace. It is essential that the United States should support its own peaceful attitudes by support of the rule of law, not only in words but in actions. The repeal of the self-judging part of the domestic jurisdiction reservation would be notice to the world that the United States, in contrast to the Soviet Union, is a law-abiding State prepared to have international legal disputes adjudicated in the "principal judicial organ of the United Nations"; that the United States is observant of the principle laid down in article 36, paragraph 3 of the Charter of the United Nations, namely, "that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court."

THE INTERESTS OF THE UNITED STATES WOULD NOT BE ENDANGERED BY THE REPEAL OF THE SELF-JUDGING CLAUSE

A study of the jurisprudence of the International Court of Justice reveals that the Court is insistent on the point that its jurisdiction depends upon the consent of the parties. The Court has not showed the slightest inclination to amplify its own authority or to act in any but a judicial and impartial way. Of course the United States might not win every case to which it was a party; we have both won and lost cases in international tribunals since 1794 when we first by the terms of the Jay Treaty agreed to this form of settlement of some of our then outstanding disputes with England.

The judgments and opinions of the International Court of Justice are well reasoned and based on law. We have had no reason to criticize the attitude of the Court in the cases to which we have been a party, that is, the case with France concerning American rights in Morocco; the *Interhandel* case with Switzerland; and the case of the Albanian gold in which we were only a nominal party.

As was pointed out by the Senate subcommittee in 1946 and as has been noted in other statements to this committee during the hearings on Senate Resolution 94 in January of this year, even without the self-judging clause, the Court could not take jurisdiction of any case involving matters essentially within the domestic jurisdiction of the United States.

Great Britain has not felt or found it necessary to attach a self-judging clause to its acceptance of the optional clause and it has had more actual experience with the world court than the United States has had. France, which had a self-judging clause copied from that of the United States, withdrew it after its experience in the *Norwegian Loans* case described above. The only other states which maintain at this time self-judging reservations modeled on that of the United States are Liberia, Mexico, Pakistan, the Sudan, Union of South Africa.

I have confined this statement to the main issue raised by Senate Resolution 94 and have not discussed other questions concerning the advantage to the United States of further acceptance of the jurisdiction of the International Court of Justice.

STATEMENT OF DR. HARLAND J. O'DELL, VICE PRESIDENT, THE AMERICAN COUNCIL OF CHRISTIAN CHURCHES, AND PASTOR, THE CANTON GOSPEL CENTER, CANTON, OHIO, FEBRUARY 17, 1960

I am Dr. Harland J. O'Dell of Canton, Ohio, pastor of the Canton Gospel Center, and vice president of the American Council of Christian Churches. I wish to present to the Senate Committee on Foreign Relations the viewpoint of the conservative-minded people of the churches in the American Council of Christian Churches on pending resolution, S. 94.

The American Council of Christian Churches represents 17 denominations and independent churches, with a membership of more than one and a half million. We as a group of Americans are opposed to the repeal of the Connally amendment for the following reasons:

1. In these days of confusion, distrust, and deceit, and of nation after nation ruled by tyranny, we need to strengthen the historic independence and freedom of our country rather than weaken it. Subtle forces within our country—though in some instances well meaning, and less well-meaning forces from the outside are suggesting that we surrender a basic, fundamental principle of our freedom to the jurisdiction of a world court, where the rights and freedoms guaranteed by the Constitution of the United States have no meaning at all.

2. Not one argument I have seen thus far presented in favor of the repeal of the Connally amendment is a sufficient reason to forfeit and jeopardize our historic liberty and the right to be tried in a court of justice.

3. We are being asked to form a world court of "justice" with such nations as Russia, who has boasted of broken promises, and in whose fundamental philosophy, lies, and deception are an admitted necessity. Moreover, this Court will be dominated by Russia, and her philosophy of "justice" will then take preeminence over the Constitution of the United States by the simple expedient of being out-numbered.

4. We have a moral obligation to preserve the heritage we have received. Our Founding Fathers fought and died for the principles they outlined in our Constitution, and passed on these liberties to us. It goes without saying that we owe it to ourselves, to our children and their children, to keep safe and strong these freedoms and rights that have sprung from faith in God and have cost so many so much.

5. The whole idea of justice through a world court is paradoxical. It is inconceivable that any law could be enacted by a system that has produced tyranny on every hand, that could also produce justice for the free peoples of the world. The Bible states this principle so aptly in the third chapter of the book of James, verse 11: "Doth a fountain send forth at the same place sweet water and bitter?"

6. The American people ought to be able to see and read the proposed "international laws" upon which any world court would make its decisions, before they even think of discarding their rights under the Constitution of the United States. Where are these laws? What strange statutes will replace our Bill of Rights? This is something every American has a right to ask.

7. Our Nation under God was founded upon Christian principles, and many times religious matters involving legal decisions must be interpreted by our courts. We cannot expect a just and fair decision from atheistic people from Communist countries where the record shows the murder of thousands of Christian people and whose avowed purpose is to stamp out religion.

CONCLUSION

The pressures causing the seeming need for a world court stem from the frightening strength and destructive power of both the United States and Russia in this missile age. May God help us to think straight, hold fast our freedom, and remember the Bible says in Proverbs 21, verse 31, "The horse is prepared against the day of battle, but safety is of the Lord."

STATEMENT OF KENT COURTNEY, PUBLISHER, THE INDEPENDENT AMERICAN NEWSPAPER, AND PUBLISHER, THE SOLID SOUTH NEWSPAPER

I am very honored to appear before this committee to speak out on behalf of the more than 10,000 subscribers to the Independent American newspaper and the Solid South newspaper, which subscribers are located in 49 States.

The reason I am here before this committee is because several hundred of my subscribers have requested that I present the following testimony:

My main thesis is that the repeal of the Connally amendment would jeopardize the United States of America as an independent republic.

To substantiate this declaration I present the following information:

"WORLD PEACE THROUGH WORLD LAW"?

The American people are, for the most part, a trusting people with respect for law, order and the U.S. Constitution. Unfortunately, however, some Americans are also gullible and will believe anything, provided that:

(a) It has a lofty-sounding slogan.

(b) Well-recognized political leaders are associated with the promotion.

Surely, the phrase "World peace through world law" sounds good. Everyone wants peace.

And the promoters of this noble-sounding slogan are no less than the President of the United States and Presidential aspirants Nixon and Humphrey. Certainly those are "big names."

These promoters of "world law" propose to achieve world "peace" by repealing the Connally amendment, so that all issues, whether domestic or international, can be settled by the World Court, of which Communist Russia is a member. President Eisenhower hopes by such action to "shame" the Soviet Union into agreeing to do likewise, and thus "world peace would be established on earth." But would it?

Continuing concessions by the United States and attempts to "shame" Communist Russia into becoming an honorable member of the family of nations are futile and foredoomed to failure.

RED RECORD OF BROKEN AGREEMENTS

Pointing up the futility of "peace agreements" with the Soviet Union, a 1955 report by the Senate Internal Security Subcommittee stated: "The staff found that in the 38 short years since the Soviet Union came into existence its Government had broken its word to virtually every country to which it ever gave a signed promise * * *. It keeps no international promises at all unless doing so is clearly advantageous to the Soviet Union."

RISKING AMERICA'S SOVEREIGNTY

Even when confronted with the indisputable fact that Red Russia does not live up to her agreements, the promoters of "world peace through world law" still persist in urging "one more try," and are willing to jeopardize the sovereignty of the United States in order to promote their scheme of "world law."

Here's how they plan to go about it:

THE CONNALLY AMENDMENT

In 1946 the U.S. Senate passed a resolution giving the World Court (the judicial arm of the United Nations) jurisdiction in international disputes affecting the United States. However, the Senate resolution contained one vital safeguard of American interests and this was a provision that the World Court would not have jurisdiction in "matters which are essentially within the domestic

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jurisdiction of the United States as determined by the United States." These last six words "as determined by the United States," are known as the Connally amendment.

In discussing this subject the Arizona Republic of Phoenix stated editorially: "If the United States yields its right to determine whether a matter is domestic or not, it yields a substantial portion of its sovereignty to a court on which two Communist judges usually sit. It binds itself to accept the decisions of a court that is weighted against democratic principles."

Further, if the Connally amendment is removed, then the World Court, sitting in The Hague, Netherlands, will have the right to determine whether a dispute is international or domestic.

ARE WORLD COURT PROMOTERS SINCERE?

Attorney General Rogers says that he is sure the World Court would not accept purely domestic cases. Mr. Rogers has a right to his opinion but one man's hopeful opinion should most surely not be a basis for risking the sovereignty of these United States. Also, if the internationalists of both political parties, who are pushing for repeal of the Connally amendment sincerely believe that the World Court will rule only on international matters, then why are they so loudly urging the repeal of the Connally amendment? Why not leave the Connally amendment intact where it can safeguard America's interests by preventing the World Court from ruling on domestic issues? The position of the internationalists is weak indeed.

WHAT IS THE WORLD COURT?

Before the United States gives up its national sovereignty, and the right to decide which are domestic issues, affecting all the citizens of our Nation, and before we put the destiny and control of our Nation in the hands of a World Court dominated by people from foreign lands—let us take a look at what the World Court really is:

QUALIFICATIONS OF WORLD COURT MEMBERS

All judges are nominated by governments which are members of the United Nations, and require for election a majority vote in both the General Assembly and the Security Council of the United Nations. The nominations, therefore, are strictly political. No bar association or other professional group may nominate.

The World Court judges take no oath of office to any principle.

There are no uniform United Nations qualifications for World Court judges—not even a legal degree.

Several of the judges now serving are from countries that have not accepted any jurisdiction of the World Court—even on international matters. And yet these judges would (if the Connally amendment is repealed) be able to rule on domestic issues in the United States.

WE ARE OUTNUMBERED 14 TO 1

The World Court is composed of 15 judges. No nation may have more than one judge. The current court is composed of the following nations: The United States of America, Egypt, Nationalist China, Australia, Greece, France, Mexico, El Salvador, Britain, Argentina, Uruguay, Norway, Pakistan, Red Poland, and the Soviet Union.

You see above that the United States has only one judge on the World Court. When his term expires there is no guarantee that another American will replace him. He could, for instance, be replaced by a representative from Hungary—and thus the United States would be at the complete mercy of the World Court on which we would not even have a representative.

FIVE JUDGES COULD RULE THE WORLD

The World Court consists of 15 judges. Nine of these would make up a quorum, and the majority of a quorum (only five) is enough for a decision from which there is no appeal.

If the Connally amendment is repealed as requested by President Eisenhower and other leftwing internationalists, it would be possible for the Soviet Union,

Poland, three other members of the World Court to get together and render judgments affecting domestic issues in the United States.

CONQUEST BY TREATY

The power of the World Court is defined by the terms of our treaty with the United Nations, which includes the safety factor of the Connally amendment. Under the U.S. Constitution, treaties are equal to or superior to the Constitution as the "supreme law of the land." The U.S. Supreme Court has held that laws made by treaty, besides being immune to any test of constitutionality, also supersede domestic law.

If the Connally amendment, which now protects us, is abolished the World Court will immediately have jurisdiction over domestic matters in the United States. Louis Budenz warned that Soviet Russia has planned for many years to use the loophole of the treaty clause to destroy the sovereignty of the United States and lead us into a World Government which would be dominated by Russia and her satellites.

DO YOU WANT A FOREIGN-CONTROLLED WORLD COURT TO RULE ON THESE DOMESTIC ISSUES?

If the extreme leftwingers, the Socialists and internationalists succeed in repealing the Connally amendment, here is what it will mean to you, as an American citizen:

WE COULD LOSE THE PANAMA CANAL

The national defense of the United States is a domestic matter. However, the repeal of the Connally amendment would make national defense a subject on which the foreign-dominated World Court could rule. For example, the Republic of Panama could sue us in the World Court to recover the Panama Canal Zone and the canal itself. Without unrestricted passage of our ships of war through the Panama Canal it is certain that we could not quickly reinforce the defenses of our Pacific coast in the event of another Pearl Harbor. The World Court could be expected to rule against the United States on the question of the Panama Canal, and the national defense of the United States would thus be dangerously weakened.

HERE ARE SOME ISSUES THE WORLD COURT COULD RULE ON

(1) *Tariff.*—The World Court by decree could abolish all U.S. tariffs, thus flooding our country with cheap-made, foreign goods which would seriously injure American industries.

(2) *Immigration.*—The World Court could abolish our immigration quotas and security provisions. In this way the United States would be forced to accept hordes of immigrants from any and all parts of the world. Also, our security restrictions against Communist agents entering our country could be abolished.

(3) *Foreign aid.*—The World Court could decree that America must continue forever and even expand foreign aid, because, the World Court would contend, if we halted foreign aid to any nation it would hurt that Nation's economy. Further, the World Court could delegate the United Nations as the sole dispenser of our foreign aid program. Because of Communist domination of the United Nations, the largest part of our foreign aid could thus be diverted to Communist countries.

CONSTITUTIONAL LAW VERSUS TYRANNICAL DECREES

The World Court operates under decrees of the United Nations—not under the Constitution of the United States.

In this country the U.S. Constitution guarantees peaceful assembly, free speech, right of petition, trial by jury, and the right to own property and other basic freedoms.

Individual guarantees and rights of this type are not found or are severely limited in the United Nations Charter and the so-called Covenant of Human Rights of UNESCO.

The rights of individuals becomes all-important in view of the mounting pressure by the internationalists in both the Democrat and the Republican Parties to repeal the Connally amendment, because if they succeed in destroying this safeguard, then the World Court will be able to rule on domestic law in the

United States, thus directly affecting our constitutionally protected rights and liberties of every individual.

In the United States, the law is established with relative firmness and clarity; there is the basis of common law, written law, and the body of established precedent. We have the further protection of having available the legislative means to repeal, amend, or enact law to meet changing conditions.

UNLIMITED POWER FOR THE PRESIDENT

Behind the smokescreen of the catchy slogan "World peace through world law" lies a deadly boobytrap. The internationalists, the Socialists, and the crypto-Communists, who apparently exert such great influence on both political parties, believe they have a way whereby they can control the United States through the office of the Presidency and through the loophole in the Constitution regarding "treaties being the supreme law of the land."

DEFEND THE CONNALLY AMENDMENT AS AMERICA'S ONLY SAFEGUARD

There is only one defense that the citizens of the United States have against the internationalists who wish to make the United States a mere satellite of Communist Russia and that is preserve the Connally amendment, which protects the national sovereignty of the United States of America.

STATEMENT OF FRANK J. VAN DYKE, ATTORNEY AT LAW, MEDFORD, OREG.,
FEBRUARY 17, 1960

My name is Frank J. Van Dyke. I am a practicing lawyer of Medford, Oreg., with membership in the Oregon State Bar and the American Bar Association. I am a former vice president of the Oregon State Bar.

Having adhered to the statute of the International Court of Justice in 1940, the United States accepted the principle that the Court of International Justice should have compulsory jurisdiction of international legal disputes. Disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America, under the term of the statute, are not within the jurisdiction of the International Court of Justice. By adding the words "as determined by the United States of America," the United States violates a basic principle that no man, no nation, should be the judge in his or its own case. Furthermore, because of the reciprocal nature of consent to the Court's jurisdiction, the self-judging domestic jurisdiction reservation enables any other party to a suit brought by the United States to determine if the matter is within the domestic jurisdiction of that country and thereby prevent the United States from utilizing the International Court.

For the reasons above indicated, the effectiveness of the World Court of International Justice has been materially impaired by the Connally reservation. In the 13 years of its existence, the International Court of Justice has only decided 10 disputes on the merits, has rendered 10 advisory opinions, and has 8 cases now pending. There were 21 legal disputes which arose during this period which were not referred to the Court and 6 legal questions on which advisory opinions might have been requested but which were not so requested.

The United States of America must take a position of world leadership in the ideological struggle with Russia. Not only must principles of international conduct be established but a system for the peaceful settlement of international legal disputes must be evolved. We propose to do this through the International Court of Justice. To make that proposal effective, the Connally resolution must be repealed as provided in Senate Resolution 94.

STATEMENT OF DR. JOHN R. LECHNER, EXECUTIVE DIRECTOR, AMERICANISM EDUCATIONAL LEAGUE, INGLEWOOD, CALIF., FEBRUARY 17, 1960

Having studied the many facets of the Communist international conspiracy for 35 years for the purpose of keeping the American people in this area informed on matters vital to the security of this Nation, I feel compelled to analyze the statements made at the January 27 hearing on the Connally amendment by

officials of this Government and by other spokesmen who advocate the rescission of the reservation in question.

Although I have spoken before thousands of civic and patriotic organizations, and have served more than three decades as a spokesman for several of these, I offer this analysis as a private American citizen.

I concur in the lofty objective of administration leaders who pledge this great Nation to advance international morality by rule of law in this troubled world. This is a consummation devoutly to be wished. Too many millions of human beings have been enslaved in our own time through rule by ruthless men.

In studying the statements made by Mr. Herter, Mr. Rogers, and others, favoring Senate Resolution 94, I find repeated references to the Connally amendment as a "preemptory domestic jurisdiction reservation of a discretionary nature," and as "a self-judging reservation," which shows mistrust of the International Court of Justice and thereby sets a bad example for the other nations of the world.

Nowhere do I find the simple facts for public scrutiny, that this Court is comprised of 15 international judges, only 1 representing the United States, and that 9 judges constitute a quorum in hearing a case, with only 5 judges needed for a majority, whose decisions become final. The provisions of this World Court leaves no room for doubt on its absolute authority, since there can be no appeal from its decisions. Furthermore, under the section of the United Nations Charter dealing with the jurisdiction of the International Court, and agreed to by this Government in Senate Resolution 190 of the 79th Congress, the Court shall have compulsory, *ipso facto* jurisdiction over such matters as "the interpretation of a treaty; the existence of any fact which, if established, would constitute a breach of an international obligation; and any question of international law."

It should be clearly pointed out that neither the U.S.S.R. nor any of its satellites has agreed to submission to the "compulsory jurisdiction" of the International Court, yet the voting strength of the Soviet bloc on the Court is irrevocably bound to the Kremlin interests. So far as adherence to the decisions of the Court is concerned in matters affecting the Soviet Union, submission to its rulings would be on a unilateral basis, in which only the United States is actually bound by these decisions. In the light of our experience with the Kremlin leaders, our willingness to abandon the right of self-determination is a mark of weakness and will in no way influence Soviet actions, unless these actions are consistent with the overall plans of the "universal state" for world domination.

As a matter of fact, the arguments advanced by administration leaders ignore completely a basic condition for the efficacy of international law, the acceptance of all parties of the moral obligations inherent in the establishment of moral values in an international code of conduct. The entire record of Soviet history, except for a few isolated cases in which the Kremlin has altered its usual tactics, points to a complete disregard for moral values, both domestic and international. To expect a change of heart by dedicated Marxists because we preach good will and peace, and government by law, is to deceive ourselves and to invite serious depredations upon the sovereign interests of the United States of America. Stewart Alsop's objective revelation in the Saturday Evening Post, January 30, of the technique for absolute control over the people within the Soviet orb as "rule by terror," must be applied to the Soviet method in relations with all other nations outside the Iron Curtain.

What the opponents of the Connally reservation are completely ignoring is that fact that the abandonment of our right to determine issues to protect our national interests is inconsistent with the established policy of the State Department itself, hence the Government of the United States. Would this administration and the advocates of S. 94 propose, as a corollary measure, the abolition of the right of veto in the Security Council? This right has been jealously guarded by our own Government as an essential safeguard against ulterior designs of the Soviet Union, despite the flagrant abuses by the Kremlin since the inception of the Council. In essence, this right of veto is a self-judging privilege of the first order, and provides a major safety valve for the actions of the U.N.

Attorney General Rogers has devoted most of his testimony in the previous hearing before the Senate Foreign Relations Committee to an expression of confidence in the operation of the International Court, based upon the adjudication of a dozen or so cases by this Court during the last 13 years. He states that in no instance was there the slightest encroachment upon the sovereign rights of this Nation.

This statement is correct as far as it goes. However, Mr. Rogers is incorrect in assuming that this is proof that there is no likelihood of intervention in our domestic affairs by the Court in the future. The World Court has no precedents by which to guide its actions, or by which this Nation can measure the future domain of issues to be adjudicated. What is to prevent, one day in the not too distant future, a majority of international judges, influenced by either the Soviet Union directly or by their own pro-Soviet governments, demanding jurisdiction over issues arising from our control over the Panama Canal, or our immigration laws, which might restrict the entrance of hordes of pro-Communist immigrants, or our tariff structure, which may be designed to protect American industry from the impact of Iron Curtain goods or cheap labor products? To hold that a stacked Court would respect American interests at all times in domestic matters would be highly presumptuous in the light of the Soviet disregard for international honor and morals. This is not a ridiculous warning, as our well-meaning internationalists would contend. The Senators who will resolve this vital issue must remember that the Soviet Union has deliberately violated 50 of the 52 major treaties which it consummated with other nations since its ascendancy in the family of nations, and they cannot ignore the shameful record of aggression against helpless nations in its inexorable expansion for world domination.

Mr. Herter also cites the examples of France, India, and the United Kingdom, which relinquished the self-reservation clause in accepting the compulsory jurisdiction of the World Court, as impelling reasons for similar action by this Government. He further cites these examples as expressions of faith in the International Court, urging that we express a like faith by abandoning the Connally reservation.

In the long run, as admirable as such faith may be, it must not be a primary criterion for our action on this amendment. One must be realistic enough to accept the bold fact that the Soviet Union is not concerned too much with the problems of these three nations, nor those of any other free or neutral nation in the Western bloc. Her sole target for disruption is the United States. The undermining of our sovereignty would inevitably lead to the capitulation of every other free nation in the world. Hence, this issue must not be resolved in the light of the fine examples of our sister nations, but in the light of our own integrity and security 5 or 10 years hence. For our Senators to do less would be to betray the immeasurable responsibility they have for the welfare of the next generation of Americans.

Mr. Walsh, Deputy Attorney General, adds to his chief's case for the repeal of the Connally reservation by stating that "the proposed amendment (S. 94) would tend better to effectuate our settled national policy to encourage and develop the rule of law in the affairs of nations."

His contention would be valid, except for one all-important factor. Until this very date, the fine example of the United States in its policies in dealing with other nations, as well as our repeated enunciation of moral principles and the acceptance of moral values in actual practice, has in no way whatsoever induced the Soviet Union to alter its traditional attitude of disregard for the moral concepts of the free world. It would seem prudent and sensible to wait until we are sure the Kremlin will not lead us to slaughter before relinquishing the means for our self defense. Let the U.S.S.R. first demonstrate her good intentions by turning over to the Court the disposition of the Berlin crisis, the problems of Germany's unification, and charges of infiltration by a number of free nations of the world.

Here again, we find the basic fallacy in the reasoning of the resolutions committee of the American Bar Association which submitted its recommendation for the abolition of the Connally reservation. Its report advocates "the elimination of the proviso reserving to the United States the unilateral right of determining as to what constitutes a matter essentially within its domestic jurisdiction." As lawyers grounded in the essence of common law, they stated the case well for our system of jurisprudence at home, and our police powers are such that no litigant can willfully escape responsibility in litigation merely by refusing to be a party to the case. However, what may be axiomatic in common law may not hold in international relations. The bar association committee ignores the nature of the Communist conspiracy with its predestined tendency to deceit, to evade, and to ignore edicts and moral codes when in the interest of its plans for a universal state. With due respect for the expert testimony of the legal profession, it must be pointed out that to expect any other course than that

of unilateral adherence to the decisions of the Court by this Nation in any major dispute with the Soviet Union, in which we alone will be morally bound, is pure fiction.

Members of the Senate of the United States have the great responsibility to read behind the lines of the impassioned pleas for turning over to an international court, rights which may easily supersede the authority of the Constitution of this Nation and the traditional freedoms of our citizens. In discussing the hearing before this committee of the Senate, I have many times encountered the statement that we can do little to stem the tide of internationalism, leading to a one-world government, because the trend is so definite. The Senate must penetrate the surface of this trend to learn who supplies the directional force which demands the surrender of the vital safeguards to our integrity as a sovereign nation.

We shall charge here that behind the scenes lurks a well-knit group of organizations, such as the former World Federalists, groups associated with the United Nations, pro-Soviet organizations, and intellectuals who envision a community of nations under international control, which will have relinquished national sovereignty and police powers, living under a utopia. These groups are powerful propaganda agents, using the slogans of "peace," "government by law," and like lofty concepts to ensnare the unsuspecting. It is a dangerous cabal at a time when the Soviet Union seeks to lull this Nation to sleep to make possible the final steps in bringing about a Marxist world. Perhaps Mr. Khrushchev had in mind when he predicted that our "children will live under communism," the peaceable surrender of our sovereignty through the brainwashing of utopian dreamers. The Senate must not accept the recommendation of the Foreign Relations Committee to repeal the Connally amendment without the most searching study of the consequences. It is in the light of tomorrow, not today, that we must examine this issue.

STATEMENT OF FRANK B. OBER, ATTORNEY AT LAW, BALTIMORE, MD., FEBRUARY 17, 1960

[The statements that follow are solely my views as an individual American citizen, and are not made on behalf of any person or organization other than myself]

For the record, my name is Frank B. Ober, an attorney of Baltimore, Md. I have been interested in efforts to substitute law for international force since 1910, when I won an essay on the subject at the Lake Mohonk Conference. I have also made special studies of communism since 1948, when the Governor of Maryland appointed me chairman of a State commission to draw an anti-subversive act for Maryland. And I may add, as an indication that it was moderate and well-planned legislation, that it was adopted with substantial unanimity by the Legislature of Maryland, and on a subsequent referendum by a popular vote of almost 3 to 1. I have written articles on the treaty-making power and also on the Supreme Court cases in the Communist field (A.B.A.J. August 1948; September 1950; January 1958). I am a past president of the Maryland Bar Association.

I earnestly oppose the repeal or any modification of the reservations to our adherence to the International Court of Justice, whether it be a repeal of the entire reservation or merely that part of it which permits this country to determine whether or not a matter is essentially within our domestic jurisdiction. No discussion of any limited first step repealing the last clause would be complete without considering the more fundamental and broader question of the repeal of the entire reservation. In the following discussion I therefore take up first the question of a repeal of the entire reservation, and thereafter point out that a repeal of the last phrase involves precisely the same principles and would destroy the protection of the Connally reservation.

I. INTRODUCTORY

The United Nations Charter contains the provision in article II, section 7, reading:

"Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state, or shall require the members to submit such matters to settlement under the present Charter. * * *

This provision was fundamental. Otherwise this country would have been surrendering sovereignty "in matters which are essentially within the domestic jurisdiction." Neither the administration, the Senate, nor the people, at the time of the adoption of the United Nations Charter or now, have been willing to reverse the Declaration of Independence and surrender sovereignty, particularly over our domestic affairs, to the United Nations. The extent to which the United Nations Charter may have limited power of the United States in foreign affairs need not be considered for we are here considering only the repeal of the Connally amendment, which would transfer judicial powers "essentially within the domestic jurisdiction of the United States." Accordingly, when the United States adhered to the International Court of Justice, the legal organ of the United Nations, by separate action, like 15 other states (including the Union of South Africa, Britain, France, Canada, Australia, the United Arab Republic, Israel, and Mexico), its declaration contained an important reservation. In the case of the United States, this reservation is known as the Connally amendment, and excludes from the jurisdiction of the International Court of Justice disputes "with regard to matters which are essentially within the domestic jurisdiction of the United States of America, as determined by the United States of America" (U.S. Treaties and Other International Acts, Series No. 1508). Twenty-two other states have adhered without reservation or with minor reservations. (These, however, include none of the great powers—except Japan. See January 1960 A.B.A.J. p. 25, note 26, giving the complete list. China, of course, as given in the footnote, means Nationalist China. The footnote is assumed to be correct that some of the reservations are minor, although in view of the bias of the author that cannot be taken as certain.)

The twin pillars of the Connally reservation are (1) the Constitution of the United States, and (2) the same insistence on maintaining our independence of the judicial organ of the United Nations that prevailed in article II, section 7 of the United Nations Charter itself; i.e., both, as would be expected, excluded from foreign power matters essentially within the jurisdiction of the United States.

II. THE PROPOSAL TO REPEAL THE CONNALLY RESERVATION IS CONTRARY TO THE CONSTITUTION OF THE UNITED STATES

Article III, section 1 of the U.S. Constitution provides: "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish." The present proposal would in substance amend this by adding: "except insofar as one House of Congress, to wit, the Senate, shall vest by a treaty the judicial power of the United States in matters essentially of domestic jurisdiction in an international court of justice."

The crux of the proposal to repeal the Connally reservation is that it removes the limitation to our adherence to the Court, which excludes from its jurisdiction "matters which are essentially within the domestic jurisdiction of the United States of America, as determined by the United States of America." It cannot be reasonably argued, therefore, that what we are concerned about here today is merely foreign affairs.

I am not unmindful of the fact that in the conduct of foreign affairs we have occasionally submitted certain disputes to arbitration. It has been said also that we have in some cases, whether rightly or wrongly, provided that disputes on matters of interpretation as to certain bilateral treaties of friendship, commerce, and navigation may be submitted to the International Court of Justice. But there, at the least we know with whom we are dealing. We have made a definite agreement and the matter is solely one of interpretation. How far this should be extended, even in so-called treaties of friendship, commerce, or navigation, presents a different question.

While some of these may be borderline cases, certainly the vast majority are concerned solely with foreign relations, and the Senate has not approved deliberately any treaty surrendering to a foreign court matters "essentially within the domestic jurisdiction of the United States."

There is a fundamental distinction in the attempt to repeal the Connally reservation. Here the proposal would be to delegate a general judicial power. This would not be confined at all to (1) specific treaties, as to which we know what we are doing, or (2) foreign affairs. Ex hypothesi, it would be a grant of judicial power in matters "essentially within the domestic jurisdiction of the

United States." It would further strike out the safeguard that, even there, what is "domestic" should be determined by the United States itself and not by the foreign tribunal.

If the Connally reservation is repealed and the United States is subjected to the compulsory jurisdiction of the International Court of Justice, such a treaty would clearly conflict with the Constitution. No one can possibly foretell when the International Court might take jurisdiction in matters essentially and clearly within the domestic jurisdiction of the United States, and over which, by the Constitution, only the Supreme Court and inferior courts established by Congress have jurisdiction. There is a vital difference between the granting of a general judicial power and the possibilities of accepting jurisdiction on a case-by-case basis, which is of course permitted under the Connally amendment, where the Senate does not believe that the essential domestic jurisdiction of the United States is involved.

No one can predict when a world court with jurisdiction to do so might take jurisdiction over matters which have been traditionally considered domestic matters, though often dealt with by various treaties. No one, so far as is known, has ever attempted to catalog the numerous questions that may involve matters essentially of domestic jurisdiction, though arising out of treaties or interpretation of treaties, such as rights of aliens; retaliatory right to seize foreign assets during war or when American assets abroad have been expropriated as they have in the past and are now currently being expropriated; controversial matters of human rights; racial problems, which, whatever anyone's views or however they may be solved in this country, involve areas of tremendous importance in domestic law and yet are dealt with in international treaties; numerous labor matters, which are matters of great difficulty in this country today and yet which are dealt with by numerous treaties. No one can predict when a world court deciding its own jurisdiction may intervene in domestic matters of the most delicate kind. One example is given in an appendix hereto relating particularly to the *Interhandel* litigation and other cases referred to therein. This appendix was prepared by Miss Eleanor H. Finch as a statement of her individual views and not that of the American Society of International Law, of which she is an officer. Since she has authorized me to file this, I respectfully ask that it be filed as an appendix to my statement.

Thus, the general grant of judicial power subjecting matters essentially of domestic jurisdiction to the compulsory jurisdiction of an International Court directly conflicts with the Constitution. This goes far beyond anything that has ever been done or attempted. As recently as February 2, 1954, the Senate (Congressional Record, 1206), including nine absent Senators (but whose votes were recorded), voted 72 to 21 in favor of the first paragraph of the administration amendment offered by Senator Ferguson as a substitute for the first paragraph of the Bricker amendment, reading as follows: "A provision of a treaty or other international agreement which conflicts with this Constitution shall not be of any force or effect." These are the exact words of the first sentence of the administration's original substitute, known as the Knowland amendment (Congressional Record, pp. 1064, 1080-1082, 1206). Those who dissented in this overwhelming vote did so for the most part because they said it was unnecessary, since it was already sound constitutional doctrine and needed no reaffirmance. It is wholly irrelevant to this discussion that this amendment fell with a second amendment which, in its last version (Senator George's substitute) failed by one vote of obtaining the necessary two-thirds. Senator George's section would have prevented some treaties from becoming self-executing. Here the proposal to repeal the Connally reservation has the exactly opposite effect and means the consent of the Senate in advance to granting compulsory jurisdiction to an International Court, and hence of a judicial power, which is in direct conflict with the Constitution. This would be directly in the teeth of the administration amendment, passed 72 to 21, which provided that a treaty or international agreement "which conflicts with this Constitution shall not be of any force or effect."

It may be noted also that the movement behind the effort by general constitutional amendment to restrict the treaty-making power arose from the numerous treaties spawned by the United Nations in social, economic fields, which it was feared would have a domestic impact. The United Nations had produced 300 by 1953 (Year Book, Encyclopedia Britannica, 1953). The most notorious of these loosely drawn treaties included the Covenant of Human Rights and the Genocide Convention, which would have made it an international crime to inflict

physical or mental injury to racial groups. Because of the outcry in the country, Secretary Dulles on April 6, 1953, assured the Senate and the country (*Encyclopedia Britannica Year Book, 1954*) that the administration would not press for their ratification. This took the steam out of this movement of the do-gooders to regulate our own domestic affairs by treaties prepared by various groups representing foreign nations in the United States. Those treaties, the International Criminal Court and others have not been revived as yet for ratification by the Senate. Manifestly, the same group in the State Department is, however, behind the present movement to repeal the Connally reservation and has apparently succeeded in persuading the administration, only a few years later, to lend its support to this even more fundamental proposal. The State Department is on record as saying: "there is now no longer any real difference between domestic and foreign affairs" (State Department publication 3072, September 1950).

It has more recently negotiated treaties for agencies such as GATT and ILO, which involved what we considered domestic affairs. How can anybody argue that there is no danger that a world court under these circumstances will supersede, through the alleged treaty power if the Connally reservation is repealed, our Supreme Court in matters which we traditionally consider essentially domestic?

III. SINCE THIS PROPOSAL AMOUNTS TO AN AMENDMENT TO THE CONSTITUTION, IT CAN CONSTITUTIONALLY BE PASSED ONLY UNDER ARTICLE V, THE AMENDING SECTION

Manifestly this proposal to subject this country to the compulsory general power amounts to an amendment of the Constitution. Numerous multilateral treaties, some of which this country has ratified and many of which may be ratified in the future, run the whole gamut of international and human relations. Under the statute, article 36, the jurisdiction of the International Court, where recognized as compulsory, applies to a wide and unknown variety of disputes, including not only (a) the interpretation of a treaty, but (b) any question of international law; (c) the existence of any fact which, if established, would constitute a breach of an international obligation; (d) the nature or extent of the reparation to be made for the breach of an international obligation. Where the dividing line between international relations and the effect on our essential domestic jurisdiction is drawn is of vital importance to this country, yet under article 36(6) of the statute for the International Court this question is settled by the International Court and not by our Supreme Court, and the Senate is asked to abdicate any power that it may have in the premises. That the International Court may decide matters essentially of a domestic origin is indicated, it is believed, by the appendix above referred to.

IV. THE ORGANIZATION OF THE INTERNATIONAL COURT PROVIDES A BENCH OF SO-CALLED JUDGES WHO CANNOT POSSIBLY BE IMPARTIAL JUDGES UNDER ANY TRADITIONAL MEANING OF OUR JURISPRUDENCE

The statute of the Court provides for a body of so-called "independent" judges, elected regardless of nationality (art. 2), consisting of 15 members, no 2 of whom may be nationals of the same state (art. 3). (Presumably Russia and the two Russian states who are members would be just as eligible to supply judges as would Britain and its Commonwealth, which have had members sitting at the same time.) They are selected by the concurrent action of the Assembly and the Security Council. The net of this is that this country cannot be represented by more than one, and need not be represented even by one regular member of the Court. The Court may include and does include members from other Communist countries. In 1946 it included members from Russia, Yugoslavia, and Poland, as well as members from Egypt and some small countries like El Salvador. As of the present date the Court includes members from Poland, the Soviet Union, the United Arab Republic, Mexico, and some central and southern South American countries. Only the United Kingdom, United States, and Australia today are representatives of the Anglo-Saxon system of law.

But with over 80 nations instead of 42 currently in the United Nations, including a very large Communist bloc and a neutralist bloc that has gained increasing power, there is no guarantee in the future that the Court would not have a very large percentage of judges coming from countries under the dictatorship of communism or some other totalitarian philosophy. Some nations, such as Cuba

(and other Caribbean or South American countries), are now under or have recently been under dictatorships, under the laws of which property is expropriated and civil liberties are completely ignored. This is true although many have adopted constitutions, joined the United Nations, ratified the Covenant of Human Rights and the Genocide Convention. No one can yet foretell the ideology that will be adopted by the rapidly increasing number of African members. Many of the Middle East and Central American countries are not as large as my State of Maryland, and often not as large as a county in the State. Yet they have an equal vote in the selection of the judges of this Court.

What difference does it make, you will ask, if we have a number of judges from Communist countries or other totalitarian countries? The answer is clear for anyone who has made any study of the independence of judges. A few examples may be in order. Professor Hazard, of Columbia, commenting on the legal system in Russia (March 1940 ABA Journal) states the position of Soviet lawyers (p. 269) to be:

"The state is necessary to guide society to the economy of abundance and an orderly way of life. Since all mankind is expected ultimately to benefit from this transition, great sacrifices can be demanded today in expectation of a better tomorrow. The sacrifices may, in times of severe crisis, such as a war or pressing of collectivization of agriculture, include disregard of procedural rules designed to protect individuals. At such times preservation of the state is paramount. When the severe crisis has been weathered, procedural rules will be enforced more strictly because in the last analysis the state, and, therefore, ultimately society, will benefit."

Ex-president of the American Bar Association, Storey, refers to the new regulations for the practice of law in Bulgaria (February 1951 American Bar Association Journal, p. 101) as follows:

"The lawyer's point of view must be changed. In the past your first duty was to protect your client. Now you must have as first aim the protection of the state and compliance with its laws. Protection of your clients is a secondary consideration."

He further explains that the law was one of the first professions controlled by Communists, and that this is not unique in communism but also applied to Germany under Hitler.

Professor Benes, of Indiana University (June 1954 ABA Journal, p. 487), writing of Communist Czechoslovakia, said:

"1. Law and legal institutions have become tools and weapons of the Communist state. Their purpose and aim are to serve the new regimes in their efforts to reconstruct society and to suppress the enemies of Communism.

"2. The concepts of Communist jurisprudence are entirely alien to those which have been accepted and developed for centuries in the Western World.

"In Czechoslovakia, in less than 4 years the Communist regime has entirely changed the legal system of the country. In this new legal order, there is no place for the judicial function as traditionally conceived in the West."

No one has forgotten the purge trials, the most recent of which, the trial of Beria, is reported in May 1955 ABA Journal, page 408, showing how completely the state takes charge of its farcical criminal trials and the so-called convictions which have made Communist justice the laughingstock of the world.

The latest report from Russia was by a group, including the then past president of the American Bar Association, reported in March 1959 ABA Journal, page 249, in which the summary includes the following:

"2. It is clear that the Soviet legal system is under the domination of the Communist Party and that it is utilized as an instrument to insure a Communist monopoly over all political, economic, and other activity in Russia. Since the Communist Party lies outside the legal framework of the Soviet Government, it is an inescapable conclusion that the real sovereign power in Russia resides outside the official Government.

"3. Communism controls and warps justice in Russia * * *

When the Attorney General suggests the elimination of the right of the United States to determine what matters are within its jurisdiction, he seems to ignore the significance of his earlier statement indicating the dramatic differences between our system of law and that of Russia. He says (November 1959 ABA Journal, p. 1182):

"3. We are a government of law, not of men. Regardless of wealth, power, or station, no one is above the law in the United States. For this reason our people need never fear that they may become the victims of ruthless political

leaders. Thus the fact, now generally conceded by everyone, that under Stalin thousands of innocent victims were killed and tortured in the Soviet Union, seems almost beyond belief to a free people. Yet, because the law in the Soviet Union is what the Communist Party says it is, many of those who acted in concert with Stalin in perpetrating these atrocities apparently have not been prosecuted nor has retribution been made for the wrongs committed."

While the above has been confined to Communist and Fascist persons masquerading as judges, one could hardly imagine being willing to submit any matter involving property to a judge from Cuba or other countries, present and past, who have expropriated the property of foreigners and acted in a wholly and completely uncivilized manner.

Does this Senate really want to repeal the Connally reservation, with the idea of establishing world law administered by such a so-called Court?

The International Court has no code of law which would permit uniform justice, since the law it is supposed to administer is not sufficiently formulated.

Here we have a Court composed of members from Moslem, Communist, totalitarian, African countries, some of them so small that they have no jurists of any sort, who are nevertheless required to determine the rights and liabilities of great industrial powers of the world and their citizens, with the mandate of article 38 to apply international conventions, customs, general principles of law recognized by civilized nations, and judicial decisions and teachings of publicists. Thus they are not restricted to any code formulated in advance, but must in effect find it for themselves. This is indeed a far-reaching task to reconcile the numerous different views of some 80 nations and their publicists or customs, and to find therefrom international law. It is not always easy for common-law judges, even when dealing with one homogeneous race, to evolve the common law. Yet they have more experience than would a bench of the heterogeneous character, even now, of the International Court, which potentially can be composed of members under the direction of their own states, which may well mean a court packed with a majority of judges professing other ideologies and unanimous only in their hatred of this country. Certainly the record in the last 20 years indicates that we have no assurance that the majority of the nations of the world will continue to support us. On the other hand, we have plenty of evidence that many of the judges of the International Court come from countries where judges traditionally consider themselves instruments of state policy, and come from nations with which we are today in mortal conflict.

V. VARIOUS PARTIAL REPEALS, WHILE AVOIDING SOME OF THE CRITICISM AND DETAIL, DO NOT AFFECT THE PRINCIPLES

Professor Sohn, of Harvard, who apparently advocates the repeal in the January 1960 A.B.A. Journal, page 23 ff., himself indicates there are many suggestions that need first be investigated.

1. Professor Sohn's first alternative to be investigated is a limited declaration relating to claims by individuals against a State for injuries to person or property. This is quite limited, but what good would it do with Cuba today?

2. The second alternative would confine the jurisdiction to disputes relating to interpretation of treaties. He correctly points out that this meets one objection; namely, that international law "is not clear on many subjects and that by accepting the jurisdiction of the Court the United States will give the Court a carte blanche with respect to the law which would be applied to our relations with other nations." This points up one of the objections made above, that the Court has no definite body of law to work on.

3. That it should be confined to NATO countries. Certainly this would be much better. At least there would be some Western views represented which would not be submerged by the Communist, Moslem, Asiatic, African, Central American, and other ideas. Even this, he suggests, could be limited to interpretation of treaties and claims between NATO members.

4. The fourth is a series for modifying the reservation on matters essentially within the jurisdiction of the United States:

(a) By leaving the determination of jurisdiction to the International Court instead of to the United States as to whether a matter is domestic. This is as far as many advocates of repeal at the present time go. But this would be merely the first step, as is obvious to anyone who has followed the efforts of the internationalists to govern domestic matters by treaty law. It is by far the most important step and involves the most fundamental principle for it is the

determination of jurisdiction that would give the International Court power to override our own Supreme Court, in violation of our Constitution. It would involve to that extent a surrender of sovereignty. Surely, every lawyer knows that the Federal-State relationship in this country has been changed by decisions of the Supreme Court, with a resulting constant increase in the power of the Federal Government and decrease in State sovereignty. Whether this is good or bad is beside the point—although the chief judges of the State courts have been among those who have protested that it has gone too far. The point is that at least the decisions have been by American judges, sworn to uphold our Constitution. Here the proposed decision would be by foreign judges, many of them coming from countries whose professed object is to destroy our country and its Constitution—judges who consider themselves instruments of State policy without any tradition of judicial independence. It has been suggested by distinguished advocates that to permit a defendant before the World Court to question jurisdiction is like permitting a defendant in an ordinary court action within the country to question the jurisdiction of the court—which incidentally he often does. These advocates in this argument completely ignore the fact that where the defendant is a sovereign nation it has a right and a duty to defend its sovereignty until and unless, under its own constitutional provisions, it agrees to domination by some other nation or a world government.

Manifestly, if there is no danger that the International Court will assume jurisdiction over matters we regard as domestic, then there is no reason for any part of the reservation. If, on the other hand, there is such danger, then the right of the United States to determine whether a matter is domestic is the most important part of it. Hence, the advocates of the transfer of the power to determine jurisdiction to the International Court must in the last analysis be willing to surrender power to determine questions essentially of domestic jurisdiction and may just as well advocate the repeal of the entire reservation.

(b) Professor Sohn's next suggestion for modifying the reservation is to rewrite the reservation to read "matters traditionally considered as within domestic jurisdiction." Illustrating this, he takes tariffs, immigration, and changes in value of currency. This merely creates another argument as to what is traditional and still leaves it to the International Court to determine it.

(c) Thirdly, Professor Sohn says there might be an exhaustive list of matters considered by the United States as essentially domestic. It is impossible to make a comprehensive list. Problems constantly change. The difficulty is that the determination of what is essentially domestic involves the very conception of sovereignty. The only way to protect our freedom and our sovereignty is to reserve the determination in each case of what we are willing to submit to the determination of a foreign court.

(d) Professor Sohn's last suggestion is to combine the last two suggestions (b) and (c).

Thus, in discussing the several alternatives to the proposal now before the Senate, he points up the importance of a careful consideration and full hearings on the present proposal, and moreover each alternative seems to present an argument in favor of retaining the entire reservation.

He does not consider any of the arguments I have tried to make above on principle. He ends up his article by pointing to other arbitration procedures, which, being on a case-to-case basis and not involving a surrender of judicial power, likewise argue against the repeal of the Connally reservation.

In conclusion, may I point out that one of the reasons for our Declaration of Independence was the interference with justice and the abuse of the power of appointment of judges. The present proposal would in part reverse our Declaration of Independence. The final result of all arguments in favor of the proposal is that the Senate is asked in substance to change our constitutional methods of resolving domestic disputes without any action under article V, the amending section. Arguments to the effect that the Court will not act in domestic matters completely ignore that constitutional restraints are directed at power.

In my argument above I believe I have made it sufficiently clear that the most important part of the reservation is the part that reserves jurisdiction in the United States to determine what is domestic, since that is essential if we are to remain a completely independent and sovereign nation.

MEMORANDUM ATTACHED TO STATEMENT OF FRANK B. OBER BY MISS ELEANOR H. FINCH

[The foregoing statement is by Miss Finch solely as her own views as an individual American citizen, and not on behalf of any person or organization. She is a member of the bar of the District of Columbia; member of the American Bar Association Section of International and Comparative Law; and executive secretary of the American Society of International Law.]

In an article on the Connally amendment which appeared in Newsweek for January 18, 1960, a statement was made to the effect that President Eisenhower, in supporting the Humphrey resolution calling for withdrawal of the reservation referred to as the Connally amendment, was asking for acceptance of World Court decisions as the law of the land. Under the U.S. Constitution, article VI, the Constitution, U.S. laws made in pursuance thereof, and all treaties made under the authority of the United States, are the supreme law of the land, anything in the Constitution or laws of any State to the contrary notwithstanding. According to the statement in Newsweek referred to, a decision of the World Court would be of equal validity and force in the United States as the Constitution, laws, and treaties of the United States. If this is so, then conceivably such a decision could override the U.S. and State Constitutions, Federal laws, State laws, and treaties.

A specific example may be cited in the case of the *Interhandel* litigation. In that instance, the U.S. Government, proceeding under the provisions of the Trading With the Enemy Act, seized and took title to the assets of General Aniline & Film Corp., as property of Interhandel which it found to be enemy owned. Under the Trading With the Enemy Act aggrieved persons may dispute such seizures and prove their wrongfulness in U.S. courts. Because Interhandel failed to produce the evidence required by the court to adjudicate this question, the case was dismissed, but was subsequently remanded by the Supreme Court for further proceedings. Without awaiting a final decision in the U.S. courts, the Swiss Government filed an action against the U.S. Government in the International Court of Justice, which was dismissed on the ground that the remedies in the U.S. courts had not been exhausted. Should the U.S. courts decide finally against the Swiss contention that Interhandel is a Swiss company and not enemy owned, and should the Swiss Government go again to the International Court, it is quite possible that the International Court will decide in favor of Switzerland. Such a decision would override a decision of the U.S. Supreme Court, the vesting action of the United States proceeding duly under its own law, and require the United States to hand over to Switzerland the property thus vested.

Another possible case is one involving the tariff laws of the United States. The United States, by executive action under the Trade Agreements Act, has become a party to the General Agreement on Tariffs and Trade (GATT) under which it has negotiated reciprocal tariff rate reductions with other parties to the agreement. Under the U.S. Constitution the power to regulate foreign commerce and to lay and collect duties and imposts is solely and specifically in the Congress. Should Congress pass a tariff law providing tariff rates which conflict with the rates established under the GATT Agreement, the parties to that agreement could claim a violation by the United States of the agreement and file an action in the International Court. A decision by the International Court upholding the complaint would thereby override U.S. law and in effect constitute a veto over the power of Congress to regulate tariffs and foreign commerce.

The withdrawal of the U.S. reservation of domestic matters as determined by it would make the above possibilities a distinct probability of serious proportions.

As an actual instance of congressional legislation conflicting with U.S. treaty obligations, the case of the Panama Canal tolls dispute may be cited. In 1912 the U.S. Congress passed the Panama Canal Act containing a provision exempting American coastwise shipping from the imposition of tolls for the use of the canal. The British Government protested, both before and after the passage of the act, that the exemption of American ships from the Panama Canal tolls would be a violation of the Hay-Pauncefote Treaty, which provided that the canal should be free and open to the vessels of all nations on terms of entire equality, including nondiscriminatory treatment in the conditions or charges of traffic. President Taft, in a memorandum accompanying his signature of the law, stated that "The British protest involves the right of the Congress of the United States

to regulate its domestic and foreign commerce in such manner as to the Congress may seem wise, and specifically the protest challenges the right of the Congress to exempt American shipping from the payment of tolls." He stated further that the British protest "is a proposal to read into the treaty a surrender by the United States of its right to regulate its own commerce in its own way and by its own methods, a right which neither Great Britain herself, nor any other nation that may use the canal, has surrendered or proposes to surrender." The matter was the subject of heated controversy both inside and outside of Congress. The international dispute precipitated by the direct conflict of what was widely regarded in the United States as a matter solely of domestic concern with the treaty obligations of the United States was considered by then Senator Elihu Root as one which the United States was obliged to submit to the Permanent Court of Arbitration at The Hague under its treaty of 1908 with Great Britain, should the latter demand it. If the two countries had been parties to the compulsory jurisdiction of an international court of justice the dispute would certainly have come under such jurisdiction.

One of the arguments made in favor of withdrawing the Connally reservation is that the reservation operates to prevent the United States from having recourse to the International Court to protect investment and other business interests of its citizens abroad, since the foreign governments involved could invoke the reservation as a defense to any U.S. complaint in the court. It ought to be noted that in the case of U.S. nationals in Morocco, in which the United States and France appeared before the International Court in a dispute involving discriminatory taxes imposed on American business in French Morocco, the U.S. reservation and the similar French reservation were not invoked. However, the U.S. contention of violation of its treaty with Morocco providing for most-favored-nation treatment, was not upheld. The discriminatory taxes on American business were upheld. It is difficult to understand how the withdrawal of the U.S. reservation to the Court's jurisdiction would operate to enable the United States to protect its citizens' business interests in such a case as this.

In this connection it ought to be pointed out that many of the foreign countries in which U.S. companies have substantial investments and business activities which are liable to serious injury if not outright confiscation are not parties to the compulsory jurisdiction provisions of the Statute of the International Court. Among these countries are Cuba, Guatemala, Brazil, Bolivia, Venezuela, and Saudi Arabia, where there are large U.S. investments in oil, tin, bananas, and other natural resources. In the current case of Cuba, where American property has been virtually confiscated, the United States has no recourse to the International Court for redress of its injury, though this is plainly a case for international adjudication. It is too plain that withdrawal of the U.S. reservation to the Court's jurisdiction will not work to the advantage of the United States in protecting its interests abroad. The violations of international law which should be subject to international judicial settlement are perpetrated by the countries which refuse to submit to such settlement.

STATEMENT OF PINCKNEY G. MOELWEE, NATIONAL SOCIETY, SONS OF THE AMERICAN REVOLUTION

The undersigned is appearing before your committee on behalf of the National Society of the Sons of the American Revolution. Due to illness, he was unable to appear and make an oral statement at your previous hearing in January. And since there is not sufficient time for an oral statement at today's hearing, the attached statement is filed calling the committee's attention to one small aspect which nevertheless has a very important message regarding the Members of Congress of the United States:

The World Court operates under decrees of the United Nations. One of the decrees is called the covenant of human rights.

Under the Constitution of the United States, the right of free speech and free assembly is guaranteed.

Also in section 6 of article 1 it is provided that, "for any speech or debate in either House, they shall not be questioned in any other place."

The human rights decree of the United Nations, under which the World Court operates, provides that free speech or free assembly can be taken away if it imperils something called national security. Without the Connally amendment, a citizen who has made a speech which the Communist nations consider unde-

strable or a Senator who made a speech on the floor of the Senate which displeased the Communist bloc could be hauled before the World Court and punished by a fine and imprisonment. The guarantee of the Constitution of the United States of free speech and the immunity to suit of Members of Congress for speeches made in both Houses would mean nothing and a Senator could be sentenced for speaking the truth on the floor of the Senate because some foreign judges decide that his speech was imperilling some vague thing called national security.

STATEMENT OF HENRI H. GRISWOLD, CHAIRMAN OF 34TH WOMEN'S PATRIOTIC
CONFERENCE ON NATIONAL DEFENSE, INC.

The 34th Women's Patriotic Conference on National Defense, Inc., in session on February 5, 1960, unanimously adopted a resolution opposing the Humphrey resolution, Senate Resolution 94, and all efforts similarly aimed at expanding the powers of the present World Court, and urging the retention and enforcement of the Connally reservation to the protocol of the U.S. adherence to the International Court of Justice.

A contention advanced in support of withdrawing the Connally amendment is that it is a stumbling block to the rule of law among nations. This argument begs the question whether unreserved submission of all justiciable disputes between the United States and other nations to the International Court of Justice will bring about the rule of law in the world. It is submitted that the withdrawal of the U.S. reservation to its acceptance of compulsory jurisdiction of the Court will not bring about this desirable condition of affairs for several reasons: (1) the ineffectiveness of the International Court in attaining this objective during the past 12 years; (2) the existence of similar reservations by other countries to which apparently none has objected officially; (3) the refusal of the nations which have flagrantly defied the law of nations and the laws of humanity during this same period to appear before the Court when complaints have been filed against them.

In addition, the withdrawal by the United States of its reservation as to matters essentially within its domestic jurisdiction will open the way to further attempts to make the United States a party to the Genocide Convention and the human rights covenants of the United Nations. Due to the alert opposition of the lawyers of this country and other groups which realize the invaluable worth of guarantees of the U.S. Constitution and Bill of Rights, these United Nations proposals have not been approved by the U.S. Senate. However, it is quite possible that another effort will be made to obtain adherence of the United States to these treaties, which, if ratified, will override the laws of the States and the rights of Americans guaranteed by their Constitution. Should the United States withdraw its reservation of domestic jurisdiction with respect to the jurisdiction of the International Court, and become a party to these human rights and other similar United Nations conventions drafted in the future, the United States will be subject to the jurisdiction of the Court upon complaint of any other country party to such conventions, regardless of whether the subject matter of the complaint is essentially one which should be adjudicated internationally. In effect, other countries could complain that U.S. laws and policies on tariffs, immigration, subversive organizations, or State laws on education, practice of professions, ownership and use of property, are a violation of the human rights covenants, Genocide Convention, General Agreement on Tariffs and Trade, or other similar treaties that may be concluded in the future. It is not inconceivable that the World Health Organization in its concern about population growth might propose a convention allotting population quotas among other nations of the world and requiring artificial limitation of population, although this might conflict with the Genocide Convention principle.

It will be recalled that the human rights covenant and the United Nations Charter have been invoked in State and Federal courts with respect to racial clauses regarding ownership, sale or lease of real property. With the removal of the U.S. domestic jurisdiction reservation, the Genocide Convention, and human rights covenants could similarly be used to hale the United States into the International Court of Justice for an adjudication upon the conduct of domestic affairs.

In arguments for the withdrawal of the U.S. reservation, it is not emphasized that the Soviet Union has not accepted the compulsory jurisdiction of the International Court, and that a number of other countries, including the United

Kingdom and members of the Commonwealth, have also reserved from that Court's jurisdiction matters which "by international law fall exclusively within" their domestic jurisdiction. What those countries consider to be within their exclusive jurisdiction under international law does not necessarily coincide with what the International Court considers to be of international concern, and what it considers to be of purely domestic concern. In this connection it should be borne in mind that the Court is composed of 15 members, from all corners of the globe and including judges from Communist countries, and only 2 of the total membership represent the Anglo-Saxon system of law and government, with its emphasis on local self-government and individual liberty. Under these circumstances a plea by the United States, for instance, in the *Interhandel* case, that the subject matter of a dispute before the Court is within its domestic jurisdiction and hence not subject to adjudication by the Court, stands no chance of being upheld. In the *Interhandel* case, the Court, after rejecting the plea of reserved domestic jurisdiction, held that the complainant has not exhausted the local remedies available to it in the U.S. courts. Should the case go back to the International Court for decision on the substantive question in issue, the U.S. Government is very likely to find itself faced with a judgment holding that its seizure of the General Aniline & Film Co. assets under the Trading With the Enemy Act was illegal and that the property should be turned over to the so-called Swiss company. As long as the reservation is in effect, and the United States maintains that the seizure is solely a domestic matter, such a judgment would have no validity.

As to the argument that the U.S. reservation to the compulsory jurisdiction of the International Court is a stumbling block to the rule of law internationally, it should not be necessary to point out, after nearly 15 years' experience with Communist ruthlessness and lawlessness, that the greatest obstacle to the rule of law in the world is the Soviet Union. It is not a party to the compulsory jurisdiction clause of the Court's statute and has refused to appear before the Court when cited by the United States in complaints involving the coldblooded shooting down of unarmed American planes with the loss of many American lives. Other Communist countries have also been cited in complaints involving similar incidents. These countries have consistently refused to submit to the International Court. They have violated many rules of international law as well as the laws of humanity, including the principles set out in the Genocide Convention and the human rights covenants. The United States on the other hand has observed these rules both at home and in its conduct toward other peoples, including the Communists.

The U.S. reservation of domestic jurisdiction with respect to the International Court has nothing whatever to do with the lawlessness which prevails in international relations today chiefly because communism has been given free rein and its crimes have been ignored. The rule of law will only be established by restraining the lawless, not by exposing the law abiding to their attacks. In our view the withdrawal of the Connally amendment would only attain the latter objective. We therefore urge its retention.

DEFENDERS OF AMERICAN EDUCATION,
 Berryville, Va., January 20, 1960.

Senator WILLIAM FULBRIGHT,
 Committee on Foreign Relations,
 Senate Office Building, Washington, D.C.

DEAR SENATOR FULBRIGHT: I see that you will hold hearing on Senate Resolution 94 on January 27. I want to go on record as being 100 percent opposed to this resolution and please have this letter placed in the printed hearings.

The one-worlders who have come out for this—and this includes the State Department, the President, the Vice President, and others, contend that the World Court would have nothing to do with our domestic affairs should this resolution pass. I believe this is untrue. If the Connally amendment is done away with, the World Court could then quite possibly decide what our policy regarding immigration should be, for example. The World Court could possibly also enter into the foreign giveaway program which is already causing us to steal money from our taxpayers without their consent, in order to give it away to foreigners. The World Court would, in all probability, see to it that even more money is taken from Americans for this purpose, and it would probably then be

given to foreigners through the United Nations. This would be even worse than the situation now is.

A thousand reasons could be given in objection to Senator Humphrey's resolution. I reiterate that I am completely against it.

Yours truly,

ELIZABETH H. OSTH.
Mrs. Robert E. Osth.

P.S.—Please see that I receive a copy of these hearings.

LAW SCHOOL OF HARVARD UNIVERSITY,
Cambridge, Mass., January 22, 1960.

Hon. J. W. FULBRIGHT,
Chairman, Foreign Relations Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR FULBRIGHT: Over the last 5 years, I have conducted several studies for the American Society of International Law and for the American branch of the International Law Association on the question of the American acceptance of the jurisdiction of the International Court of Justice.

I would like very much to testify on this matter before your committee but unfortunately I cannot be in Washington next week.

Your committee might, however, be interested in my conclusions on this matter which are contained in an article published in the January 1960 issue of the American Bar Association Journal, a copy of which I enclose. If possible, I would like to make this article a part of the record of your hearings.

Sincerely yours,

LOUIS B. SOHN, *Professor of Law.*

[From the American Bar Journal, January 1960]

INTERNATIONAL TRIBUNAL: PAST, PRESENT, AND FUTURE

(By Louis B. Sohn, professor of law at Harvard University)

Most private claims by nationals of one state against the government of another state are solved on the domestic level. In most countries of the world the principle of governmental liability is now accepted and adequate procedures exist for claims against the government, including special claims courts.¹ Most of these remedies are open to foreigners on the same terms as to nationals, though sometimes certain restrictions may be found which are applicable only to foreigners, e.g., the requirement of reciprocity on the part of their national government.

But there are always some cases in which the private claimant is not able to obtain a proper satisfaction in the courts and has to ask his national government for assistance. In the old days this assistance was limited to the issuance of letters of marque authorizing the injured individual to make reprisals, i.e., to seize goods belonging to the state which inflicted the injury or to the citizens of that state.² Later, states presented the claims of their citizens through diplomatic channels and, when no redress could be obtained, used force to persuade the responsible government to pay an indemnity.³

Since the middle of the 17th century a more satisfactory method has been used to deal with the matter—arbitration. The early cases had still a medieval flavor; e.g., the Treaty of Westminster, concluded in 1654 by England and the Netherlands, provided that "the arbitrators shall, after the first day of August next ensuing, unless they agree beforehand, be shut up in a room separate from all other persons without fire, candle, meat, drink, or other support, till they have agreed of the matters aforesaid to them referred."⁴ This was certainly an effective method to insure a prompt decision.

¹ H. Street, "Government Liability: A Comparative Study" (Cambridge, 1953), pp. 1-24.

² G. Butler and S. Maccoby, "The Development of International Law" (London, 1928), pp. 173-179; G. Schwarzenberger, "International Law in Early English Practice," 25 *British Year Book of International Law* (1948), pp. 52, 55-58.

³ See, e.g., the correspondence concerning the Finlay Claim, 39 *British and Foreign State Papers*, pp. 410-879.

⁴ W. M. Darby, "International Tribunals" (London, 1904), pp. 244-246.

The history of modern arbitration starts usually with the American-British arbitrations under the Jay Treaty of 1794,⁸ one of which resulted in more than 500 awards in favor of private claimants.⁹ More than 100 claims were settled by another American-British arbitral commission under the London Treaty of 1803.¹ A United States-Mexican Commission established by a convention of 1808 dealt with more than 2,000 mutual claims of which, however, almost 1,700 were dismissed.² The claims made by the United States against Great Britain on account of alleged violations of neutrality led to the so-called Alabama Claims Arbitration under the Washington Treaty of 1871; a tribunal including eminent jurists from Italy, Switzerland, and Brazil awarded \$15,500,000 to the United States.³ Another accumulation of American-British claims was decided by a tribunal established under the Washington Agreement of 1910; while the amounts claimed exceeded \$8 million, the tribunal awarded only \$84,000 to the American claimants and only \$240,000 to the British claimants. The cases decided included the claim of the Cayuga Indians against New York State and the case of the British schooner *Lord Nelson* in which the tribunal awarded interest from 1810 to 1912. In this case the claimant's ship was seized in 1812 and it took his heirs a hundred year to recover compensation for his loss.¹⁰

All previous claims commissions were overshadowed by the more than 40 mixed arbitral tribunals created after World War I to deal with claims of Allied nationals against the Central Powers. Three of the tribunals with Germany handled, for instance, over 60,000 cases altogether. The separate American-German Mixed Commission had to consider some 18,000 cases.¹¹ The new feature of this group of tribunals was that individual claimants were given direct access to them, their national governments exercising only minimal controls over the proceedings.

Apart from these special tribunals established to deal with private claims, there have been many international tribunals created over the last 150 years to deal with other disputes between governments, relating to almost every problem of international law; they decided disputes about boundaries, violations of laws of neutrality, fisheries, international waterways, interstate loans, and the interpretation of various international treaties.¹²

The procedure for the settlement of international disputes was codified by the Hague Conferences of 1899 and 1907, which also established the Permanent Court of Arbitration. While this court was merely a panel from which parties to a dispute could select judges by agreement, many important cases were decided within its framework.¹³ It exists still, and its members have the additional function of making nominations for judges of the International Court of Justice.

The Permanent Court of International Justice, established under the auspices of the League of Nations in 1920,¹⁴ has been continued by the United Nations under the new name of the International Court of Justice.¹⁵ The members of the Court are elected now by the General Assembly and the Security Council by concurrent votes, the vote in the Council not being subject to a veto. There are at present 15 members of the Court; their terms are 9 years, one-third of the judges being elected at 3-year intervals.¹⁶ They can be reelected and in fact several members of the Court have served two or more terms.

The Permanent Court of International Justice handled 65 cases; it rendered 32 judgments (more than 1 in some cases) and 27 advisory opinions; 12 cases were withdrawn by agreement of the parties.¹⁷ Thirty-two cases have been sub-

⁸ 2 Miller, "Treaties and Other International Acts of the United States of America," p. 246.

⁹ 4 Moore, "International Adjudications," modern series, pp. 179-551.

¹ 1 Moore, "History and Digest of the International Arbitrations to Which the United States Has Been a Party," pp. 391-426.

² 2 Idem, pp. 1287-1369.

³ 1 Idem, pp. 405-682.

¹⁰ "American and British Claims Arbitration," report by F. K. Nielsen (1926), pp. 87-39, 203-331, 432-435.

¹¹ M. O. Hudson, "International Tribunals" (Washington, 1944), p. 9.

¹² For a list of the principal arbitrations from 1794 to 1938, see A. M. Stuyt, "Survey of International Arbitrations" (The Hague, 1939).

¹³ Most of its decisions are collected in J. B. Scott, "The Hague Court Reports" (New York, 1916, 1932), 2 vols.

¹⁴ 1 M. O. Hudson, "International Legislation," p. 530.

¹⁵ 2 Idem., p. 510.

¹⁶ The present judges come from the following countries: Argentina, Australia, China, France, Greece, Mexico, Norway, Pakistan, Panama, Poland, Soviet Union, United Arab Republic, United Kingdom, United States, and Uruguay.

¹⁷ M. O. Hudson, "The Permanent Court of International Justice, 1920-42" (New York, 1943), p. 779; Hudson, "The Twenty-fifth Year of the World Court," 41 American Journal of International Law (1947), p. 1.

mitted to the International Court of Justice since 1945. It decided 11 cases on the merits, dismissed 13 on jurisdictional grounds, and 3 were settled out of court or discontinued. Five are still pending; they include territorial disputes between Portugal and India and between Honduras and Nicaragua, as well as private claims against Spain, Lebanon, and Bulgaria. The Court has also rendered 10 advisory opinions answering questions asked by the United Nations and UNESCO.¹⁸ It must be remembered also that the settlement of many disputes is due to the existence of the Court. The very fact that one party to a dispute is able to warn the other party that, if the dispute is not settled it will be submitted to the Court, leads quite often to a satisfied compromise.

THE COURT'S FUNCTION—LIMITED JURISDICTION

This preventive function of the International Court of Justice is, however, limited by the fact that the Court does not have full jurisdiction over all legal disputes between all states. Its jurisdiction is merely optional; it depends on a prior consent of the defendant state to submit a case to it. This consent is sometimes embodied in a special agreement (usually called compromise) accepting the jurisdiction of the Court with respect to a dispute which is already in progress.¹⁹ More often the consent to the jurisdiction of the Court is contained in a treaty relating to submission to the Court of certain disputes which may arise in the future. Many bilateral treaties on pacific settlement of international disputes provide for the compulsory jurisdiction of the Court over legal disputes or disputes in which the parties are in conflict as to their respective rights.²⁰ Jurisdictional clauses are also contained in hundreds of bilateral and multilateral treaties on practically every subject of international relations; it is usually provided in those treaties that any dispute with respect to the interpretation or the application of the treaty in question should be submitted to the International Court of Justice.²¹ The United States has included such provisions in its recent treaties of friendship, commerce, and navigation; and, in consequence, any dispute relating to the interpretation or the application of these treaties, without any reservation whatsoever, can be brought before the Court by unilateral application of either party to the dispute.²²

There are also a few multilateral treaties on pacific settlement of disputes which confer jurisdiction on the Court with respect to broad categories of legal disputes. To this group belong: the two General Acts for the Pacific Settlement of International Disputes, adopted, respectively, by the Assembly of the League of Nations in 1923 and the General Assembly of the United Nations in 1948;²³ the American Treaty on Pacific Settlement of 1948 (so-called Pact of Bogotá);²⁴ and the European Convention for the Peaceful Settlement of Disputes of 1957.²⁵ All these treaties provide not only for the submission of legal disputes to the Court, but also for the settlement of other disputes through conciliation, arbitration, or other means.

THE CONNALLY RESERVATION—AN OBSTACLE TO WORLD LAW

Finally, the Statute of the International Court of Justice contains in article 38 the so-called optional clause, allowing the acceptance of the jurisdiction of the Court by unilateral declarations in relation to any other states accept-

¹⁸ International Court of Justice, Yearbook, 1958-59, pp. 39-40, 44.

¹⁹ For instance, the recent dispute between France and the United Kingdom about the sovereignty over two small islands off the coast of France (Minquiers and Ecrehos), was submitted to the Court on the basis of a special agreement. I.C.J. Reports, 1953, pp. 47, 49-50.

²⁰ More than 200 such treaties are published in the "Systematic Survey of Treaties for the Pacific Settlement of International Disputes," 1928-48 (prepared by L. B. Sohn; United Nations Publication No. 1949, v. 3). These treaties also contain provisions for the submission of nonlegal disputes to conciliation or arbitration or both.

²¹ For a list of recent treaties containing such jurisdictional clauses, see International Court of Justice Yearbook, 1958-59, pp. 236-251.

²² See, e.g., art. 25 in the Treaty of Friendship, Commerce and Navigation between the United States and the Netherlands, signed at The Hague, Mar. 27, 1950. U.S. Treaties and Other International Acts Series, No. 3942.

²³ Ninety-three League of Nations Treaty Series, pp. 345-363; 71 United Nations Treaty Series, pp. 101-127; L. B. Sohn, "Basic Documents of the United Nations" (1950), pp. 76-85.

²⁴ Thirty United Nations Treaty Series, p. 55; L. B. Sohn, "Cases on World Law" (1959), pp. 1059-1071.

²⁵ Council of Europe, European Treaty Series, No. 23.

ing the same obligation. At this time, 38 states have made such declarations, some of them unconditionally, others with important reservations.²⁰ The United States made a far-reaching reservation excluding from the jurisdiction of the Court disputes "with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America."²¹ There was no precedent for this reservation at the time it was made, but it has now been copied by several states, thus causing a general devaluation of the idea of compulsory jurisdiction.²²

The effect of these reservations is much broader than is generally recognized. They not only protect the states making them, but benefit also those nations against which the states making the reservations would like to bring a claim. For instance, if the United States should bring a case against Uruguay which has made no reservations in her own declaration, Uruguay can invoke the American reservation and the Court would have to dismiss the case.

Consequently, the narrowness of the U.S. jurisdictional declaration constitutes an important obstacle to effective protection of American trade and business abroad. As matters pertaining to the treatment of American investments in foreign countries can be easily considered as being essentially within the jurisdiction of those countries, any claims brought by the United States on behalf of injured American investors are likely to founder on a rock of our own making.²³

If our Government really wants to provide effective protection for our investments abroad, it should reconsider our declaration accepting the Court's jurisdiction. While there have been several recent indications that the matter is being considered by the Department of State and the Department of Justice, no official proposals have been presented to the Senate on the subject as yet. Whether an adequate solution is found will depend to a large extent on the support given by the lawyers of America to this new effort to enlarge the area of the rule of law in international affairs.

The following concrete suggestions need to be investigated before a final decision is made:²⁴

1. The United States should make a special declaration accepting unconditionally the jurisdiction of the International Court of Justice in disputes relating to claims arising out of acts or omissions of a state which have caused an injury to the person or property of a national of another state.

Such a declaration would take care of the special problem of claims against other nations based on mistreatment of American citizens. It would enable us to bring claims before the Court against all those nations which have made no special reservations on this subject, i.e., against almost 30 nations at this time. While, by reciprocity, we would be subject to similar claims against us, the United States has more interests to protect abroad than there are foreign interests which need protection against us. In the long run, such a declaration would afford important additional protection to American investments in many countries, without exposing the United States to too many claims by foreign countries.

2. The United States should make a special declaration accepting unconditionally the jurisdiction of the Court with respect to disputes relating to the interpretation and application of international agreements concluded by the United States with other nations.

This declaration would meet the objection that international law is not clear on many subjects and that by accepting the jurisdiction of the Court the United

²⁰ The following 22 states have made declarations without reservations or with only minor reservations: Belgium, China, Colombia, Denmark, the Dominican Republic, Finland, Haiti, Honduras, Japan, Liechtenstein, Luxembourg, the Netherlands, Nicaragua, Norway, Panama, Paraguay, the Philippines, Sweden, Switzerland, Thailand, Turkey, and Uruguay. Important reservations were made by the following 16 states: Australia, Cambodia, Canada, El Salvador, France, Israel, Liberia, Mexico, New Zealand, Pakistan, Portugal, the Sudan, the Union of South Africa, the United Arab Republic, the United Kingdom and the United States.

²¹ U.S. Treaties and Other International Acts Series, No. 1598.

²² The following states have made similar reservations: France, India, Liberia, Mexico, Pakistan, the Sudan, and the Union of South Africa. The Indian declaration is no longer in force; the French reservation was withdrawn in 1959.

²³ That this is not imaginary is shown by the *Norwegian Loans* case, in which a claim by France on behalf of French creditors was dismissed by the Court in view of Norway's invocation of the domestic jurisdiction clause in the French declaration. International Court of Justice Reports, 1957, pp. 9-28.

²⁴ See also the "Reports of the Committee on Study of Legal Problems of the United Nations," 52 Proceedings of the American Society of International Law (1958), pp. 285-288; 63 id. (1959), pp. 354-359.

States would give the Court a *carte blanche* with respect to the law which would be applied to our relations with other nations. There is no such danger in case of treaties negotiated by the United States with other states and properly ratified in accordance with our constitutional processes. The law to be applied is contained in those treaties and the disputes to be submitted to the Court would relate only to the principles of law expressly accepted by the United States through the ratification of these treaties. The United States has already accepted the jurisdiction of the Court with respect to some treaties;²¹ a new declaration could broaden this acceptance to all treaties, past and present. Again this is an area in which the United States is likely to benefit more than any other nation from making certain that the Court would have jurisdiction to interpret all those treaties in the performance of which the United States, as a party to them, has a vital interest.

3. The United States should negotiate a treaty with other members of NATO, conferring upon the Court jurisdiction to decide all legal disputes among NATO countries.

The purpose of such a treaty would be to show that we are really sincere about the rule of law in international affairs. The countries of NATO are connected with us by many historical and cultural ties; we have a common tradition in many fields, and the modern concepts of international law have originated in this Western community. Even if there are some doubts today about the measure of agreement between the West and other areas of the world as to some principles of international law, the differences are minimal in the relations among the nations of the West. We should be able to accept the rule of law at least as far as disputes among nations of the West are concerned. If that is too much, perhaps we could at least start with a tripartite agreement among the United States, Canada, and the United Kingdom. The General Acts for the Pacific Settlement of Disputes (to the first of which Canada and the United Kingdom are parties) and the recent European Convention for the Peaceful Settlement of Disputes could serve as models for such an agreement.²²

If the NATO countries should be unwilling to submit "family" disputes to outsiders and should prefer a tribunal composed only of judges coming from the NATO countries, they can establish a special regional tribunal. Alternatively, they may request the International Court of Justice to establish a special chamber for the decision of disputes among them and to appoint to that chamber those members of the Court who are nationals of states parties to the North Atlantic Treaty or such other judges as the parties to that treaty would like to have among the members of the special chamber. Such a chamber may, if necessary, sit in other places than The Hague; e.g., in case of a dispute between Canada and the United States, it may sit in the Western Hemisphere.

Should it prove difficult for the NATO countries to reach an agreement submitting to the Court all legal disputes among them, they might at least agree to submit to the Court disputes relating to the interpretation of treaties or to private claims (as suggested under Nos. 1 and 2, above).

4. The United States should replace its declaration accepting the Court's jurisdiction by a new declaration in which the reservation on "matters essentially within the jurisdiction of the United States" would be modified in one of the followings ways:

(a) The phrase "as determined by the United States" might be omitted, thus leaving to the Court rather than the United States the determination whether a matter is domestic.

(b) The reservation might be restricted to "matters which have been traditionally considered by the United States as matters within the domestic jurisdiction of the United States."

(c) The declaration might contain an exhaustive list of matters considered by the United States as essentially domestic matters.

(d) A list of reserved matters might be an open-ended one and might be combined with a clause relating to "any other matters which have been traditionally considered by the United States as matters within the domestic jurisdiction of the United States."

²¹ See footnote 22 above. Such special acceptance of the jurisdiction of the Court was expressly approved by the Committee on Foreign Relations of the Senate in 1948. S. Ex. Rept. No. 8, on the Treaty of Friendship, Commerce and Navigation with China, p. 8 (80th Cong., 2d sess., May 26, 1948).

²² See footnotes 23 and 25, above.

While the previous three suggestions could be adopted without any revision of the U.S. declaration of 1946, the purpose of this group of suggestions is to modify the undesirable aspects of the old declaration. The most drastic step would be to omit the phrase "as determined by the United States" in its entirety. It could be justified by the fact that the Court is not likely to accept jurisdiction over a matter which is clearly domestic, and is reluctant to step outside the ordinary limits of international law.⁸³

On the other hand, there are some matters which the United States has traditionally considered as matters of domestic jurisdiction (such as tariffs, immigration, and changes in the value of currency), but which other nations consider as having important international consequences. For that reason, the United States might wish to restrict its declaration to "matters which have been traditionally considered by the United States as matters within the domestic jurisdiction of the United States." The effect of such a reservation would be to limit the possibility of an arbitrary determination by the United States (or by a nation against which the United States has brought a claim) that a matter is within its domestic jurisdiction after a case has arisen. Instead, the nation claiming this exception would have to prove in each particular case that a particular matter has been considered by it for a long time as a matter within its domestic jurisdiction. In most cases of importance, it should not be difficult for the United States to present the necessary proofs.

If the United States should wish, however, to avoid the necessity of carrying the burden of proof in some cases, it could enumerate in its declaration all matters which it considers as essentially domestic. Such a list could be either exhaustive or open-ended, i.e., it might be combined with a clause excluding in addition to the enumerated matters also "any other matters which have been traditionally considered by the United States as matters within the domestic jurisdiction of the United States."

All these suggestions relate to improvements in our attitude toward the International Court of Justice. But there are also many other ways of settling disputes between nations, and more attention should be paid to international arbitral tribunals composed of judges selected for a particular case and authorized by the parties to decide on the basis of not only law but also justice and equity. The International Law Commission has recently adopted model rules on arbitral procedure trying to insure that the nations which have agreed to an arbitration carry out that undertaking in good faith.⁸⁴ It is an excellent document, full of new ideas for making international arbitration really effective.

In addition, serious consideration should be given to various current proposals for special international tribunals accessible not only to states but also to individuals and corporations. There is no need to cause international complications by treating each claim by a national of one state against another state as a dispute between states. Many matters might be decided in a satisfactory manner by smaller tribunals without resort to the International Court of Justice at The Hague. Such special tribunals need not be restricted to claims by states but like some past tribunals might be open directly to the private claimants. If private claims could be treated as a routine matter by such special claims tribunals, an important cause of irritation would be removed from interstate relations.⁸⁵

All these suggestions involve important points of principle and their respective merits need to be investigated carefully by the Government and the lawyers of this country. Several committees of the American Bar Association have already started such investigations, and it cannot be doubted that many additional interesting suggestions will result from them.

⁸³ For an excellent description of the Court's attitude toward problems of jurisdiction, see H. Lauterpacht, "Development of International Law by the International Court" (London, 1958), pp. 91-115. See also S. Rosenne, "The International Court of Justice" (Leyden, 1957), pp. 249-360.

⁸⁴ Report of the International Law Commission Covering the Work of Its 10th Session, 1958 (General Assembly, Official Records, 13th sess., supp. No. 9), pp. 2-10.

⁸⁵ For an analysis of various proposals for such special international tribunals, see L. B. Sohn, "Proposals for the Establishment of a System of International Tribunals," in M. Domke, ed., *International Trade Arbitration* (New York, 1958), pp. 63-76.

RODDIS PLYWOOD CORP.,
Marshfield, Wis., January 22, 1960.

Senator WILLIAM FULBRIGHT,
Chairman, Senate Foreign Relations Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR FULBRIGHT: I wish this letter to be part of the official record of the hearing of the Connally amendment to the World Court resolution.

"World Peace Through World Law" is apparently to be the beguiling slogan offered the American people to still their protests against a massive surrender of the sovereignty of the United States to the World Court. Thus, repeal of the Connally amendment to the World Court resolution is offered in the name of "peace," and in high flown language which actually brings applause from a Congress, which seems to have collectively forgotten its oath of office to defend the Constitution and the integrity of the United States.

That it constitutes a proposal to modify our sovereignty was conceded by the Chicago Sun Times in a December 31, 1950, editorial, which may be found in the January 7 issue of the Congressional Record, page A-41. It makes this acknowledgment by describing Vice President Nixon as "an outspoken champion * * * of the World Court, even at the cost of modifying U.S. sovereignty."

In 1940, after lengthy debate, the United States accepted the jurisdiction of the World Court in international affairs only. The Connally reservation, which carefully reserved to the United States the right to determine what matters are international, and what are domestic, was adopted by the Senate by an overwhelming vote of 60-2. I would like to suggest that you review the debate of 1940, and that the reasons for this vote are more compelling today than they were in 1940, since we have already had at least one decision of the Court, whereby the interests of the United States were adversely affected. I refer to the decision by the Court which required the reinstatement of 11 security risks, employed by the United Nations, and forced the United States to pay substantial sums in back pay.

Proponents of repeal of the Connally amendment claim that the World Court resolution bars the Court from intervening in disputes which are essentially within the domestic jurisdiction of the United States. However, a provision of the World Court statute, itself, makes mince of this protection, since it specifically provides that, if there is ever any dispute as to whether the World Court has jurisdiction, the Court itself will decide the question—and there is no appeal from its decision.

Thus, the proposal to repeal the Connally amendment to the world court resolution becomes the greatest threat to constitutional government in our generation. Without this all-important reservation, the world court would be empowered to intervene—at its own discretion—in the domestic affairs of this Nation. It takes little imagination to realize that our right to control the Panama Canal, our Immigration Act, our tariff laws, and even our right to reduce foreign aid, might one day be subject to the review of the Court.

Of immediate concern is the fact that the world court is not now—and never will be—bound by the provisions of the Constitution. It has many covenants which, if enforced in this country, would do violence to our Constitution, and the freedoms it secures. We have but 1 vote on its 15-member body, and no assurance that we will always have even that 1 vote. The Communists accept no jurisdiction of the Court, but they are amply represented on it. The suggestion that the Communists will be shamed into acceptance of jurisdiction, if we surrender additional sovereignty, mocks the intelligence of the American people. If the Communists couldn't be shamed over Hungary, when will they ever be shamed?

There is one more argument in behalf of repeal of the Connally amendment, which must be examined for its validity. It is frequently asserted that the American Bar Association supports repeal of the Connally amendment, and its presently constituted committee on peace and law is trying to give this impression.

It is true that in 1947 the American Bar Association did support such a resolution, but that was before the Soviet Union exposed its true colors, and before the internationalists in high echelons of our own Government brazenly announced, "There is no longer any real distinction between domestic and foreign affairs." This statement, together with John Foster Dulles' warning of the dangers of treaty law, triggered the long fight for the Bricker amendment, which

was led by the American Bar Association, and which was lost by one vote in the Senate.

Because we have no Bricker amendment, the Connally reservation is the only safeguard possessed by the American people that constitutional government shall endure in this country. Thus, Senate Resolution 94, introduced by Senator Humphrey, of Minnesota, must be defeated if the United States is to retain its Constitution and its sovereignty. The great majority of the bar association understands this perfectly. Many of its members, including the Texas Bar Association, have served notice that they consider the 1947 resolution out of date and themselves no longer bound by it.

Apparently Attorney General Rogers, who is among those pushing this proposal, also considers the resolution out of date, because he has urged that a reaffirmation of the resolution be submitted to the bar association's house of delegates. It is not without significance that Mr. Charles Rhyne, chairman of the American Bar Association Committee on Peace and Law, has contented himself with calling attention to the old resolution, but has not called for reaffirmation. The writer questions whether such reaffirmation would be given.

The importance of the world court issue cannot be exaggerated¹. It is this country's tragedy that very few Americans are even aware of it as an issue, much less that it constitutes a "clear and present danger" to the United States. The very survival of our Republic is threatened, since further impairment of our sovereignty could serve as a steppingstone to a world government under alien control. No more terrible price could be paid for peace. I therefore urge you to oppose Senate Resolution 94.

Sincerely yours,

H. S. JONES.

BRONXVILLE, N.Y., January 22, 1960.

HON. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations,
Senate office Building, Washington, D.C.

DEAR MR. CHAIRMAN: We are forwarding to you herewith a copy of my letter to Senator Kenneth B. Keating regarding Senate Resolution 94 on which your committee has scheduled public hearings for January 27, 1960.

The principle mentioned in the letter applies to every Member of the Congress of the United States who would support a world court resolution.

Will you therefore include same in the record of the hearings. Thank you very much.

Sincerely yours,

H. JOSEPH MAHONEY.

BRONXVILLE, N.Y., January 22, 1960.

HON. KENNETH B. KEATING,
Senate Office Building, Washington, D.C.

DEAR SENATOR: In your remarks entitled "Revision of Connally Amendment: A Duty the Senate Must Not Shirk" which are noted on page 445 of the Congressional Record, January 14, 1960, it is pointed out that, "In our Nation there is a passion for justice and a feeling almost of reverence toward the law." Our supreme law states that, "The Senators and Representatives * * * shall be bound by oath or affirmation to support this (United States) Constitution" (art. 3, clause 3).

The first law (1 Stat. 23) passed under the Constitution of these United States and which our first President signed on June 1, 1789, lays down the form of oath of allegiance to the Constitution of the United States. You as an elected officer of the Government were required to "solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic;" (15 Stat., July 11, 1868).

The original "Acceptance of Compulsory Jurisdiction of International Court of Justice, August 2, 1946," is in violation of our Federal Constitution since "The Judicial power of the United States shall be vested in one Supreme Court" and should be terminated rather than compound the crime with another declaration (S. Res. 94, introduced by Senator Humphrey) which would be a loss of significant U.S. sovereignty to an international organization and propel our Nation into alien control. Such declarations are repugnant to the Constitution of the United States and the principles of the Declaration of Independence.

I doubt very much it can be said of you that, "He has combined with others to subject us to a jurisdiction foreign to our Constitution * * * altering fundamentally the forms of our governments."

We hope that you will not continue to support this or any other World Court resolution.

Sincerely yours,

H. JOSEPH MAHONEY.

FLORIDA COALITION OF PATRIOTIC SOCIETIES,
Tampa, Fla., January 23, 1960.

Senator WILLIAM J. FULBRIGHT,
Chairman, Senate Foreign Relations Committee, Senate Office Building, Washington, D.C.

DEAR SENATOR FULBRIGHT: I wish to register my opposition to the passage of U.S. Senate Resolution No. 94, introduced by Senator Humphrey and intended to repeal the so-called Connally amendment. This Connally amendment was designed to prevent a world court from taking jurisdiction over the domestic and internal affairs of the United States and to protect the people of America from legal interpretations harmful to their interests. There is no reason whatsoever to repeal this amendment. We have everything to lose and nothing to gain. We cannot take the risk of foreign courts interfering in our domestic affairs.

The U.S. Senate was created originally for the purpose of protecting and defending the rights of the States and its individual citizens. The present U.S. Senate has no right whatsoever to pass any resolution or to take any action or to commit a single act which will in any way make it possible for our children to lose their freedom and liberty or cause our country to risk any part of its national sovereignty.

I am not willing to trust the future of this country or of its citizens to decisions of a world court. The people of our country can expect no mercy or justice from foreign judges. I vigorously protest the passage of Senate Resolution No. 94. Such a course would lead our children into bondage from which they could never return. I desire that this letter be made part of the record of the hearings before the Senate Foreign Relations Committee.

Yours sincerely,

SUMNER L. LOWRY, Chairman.

CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON ATOMIC ENERGY,
January 25, 1960.

Hon. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR BILL: I am enclosing a letter I have received from several citizens of Silver City, N. Mex., in which they advise me of their opposition to Senate Resolution 94, relating to our recognition of the jurisdiction of the International Court of Justice.

I understand hearings will be held by your committee this Wednesday, January 27, on this resolution. I would appreciate this letter being brought to the attention of your committee and being made a part of the record.

Sincerely yours,

CLINTON P. ANDERSON.

SILVER CITY, N. MEX., January 21, 1960.

Hon. CLINTON P. ANDERSON,
Senate Office Building,
Washington, D.C.

DEAR MR. ANDERSON: The resolution to repeal the Connally amendment is to be voted upon very soon. We as citizens of Grant County, State of New Mexico, do pray and plead that you represent us by voting against the repeal of the amendment.

Oppose Senate Resolution 94. We condemn it, think it unwise, un-American and extremely dangerous to posterity as well as to citizens now living.

Don't throw us into the arms of communism by surrendering our sovereignty and our last vestige of hope to remain a sovereign and free people. Let us not be subjected to compulsory jurisdiction of the Court of International Justice.

We respectfully request your support of the Connally amendment.

Thank you.

Very truly yours,

Mrs. Jesse L. Turner, Grant County Democratic Chairwoman; Mrs. Owen C. Matthews, A. R. Rhodes, Joseph W. Hodges, Mrs. Monroe Pennington, Edna Madrid, Mrs. I. S. Turner, Mrs. Minnie Hendrix, H. F. Rutishauser, George Ewen, Wayne C. Tomey, Jack O. Stewart, Mrs. Rita Nancy Hansen, Jr., Harry G. Hansen, Jr., W. D. Rains, Marie Rains, Carrol Mann, Jay Lee Mann, Jackie Willson, Jerry O. Van Winkle, J. R. Tipton, W. H. Emerlick, Mrs. A. R. Rhodes, Owen C. Matthews, Mrs. W. F. Moore, W. F. Moore, Mrs. J. B. Roach, Mrs. T. A. Baker, William South.

WESTWOOD, N.J., January 27, 1960.

Senator J. W. FULBRIGHT,
Chairman, U.S. Senate Foreign Relations Committee,
Senate Office Building,
Washington, D.C.

DEAR SENATOR FULBRIGHT AND THE COMMITTEE: The "United States Day" Committee of Bergen County, N.J., respectfully requests that the following statement be made a part of the record of the hearings on Senate Resolution 94, introduced by Senator Hubert Humphrey, March 24, 1959.

The World Court resolution of 1946 was ratified by the U.S. Senate, only after Senator Tom Connally, then the chairman of the Senate Foreign Relations Committee, inserted the amendment which has become known as the Connally amendment, "as determined by the United States." This established the right of the United States to determine in advance, whether matters proposed for World Court decisions were within domestic jurisdiction of our country or were to be subject to jurisdiction of the International Court of Justice.

Senate Resolution 94 is designed to repeal that safeguard of the Connally amendment.

Despite some criticism that we have abused that reservation, there have been many disputes that concerned the United States, on an international basis, heard before the World Court which proves that there has been no abuse of the provision. However, we point to the Berlin crisis and the Suez crisis as examples of two of the most important international issues confronting the world which were allowed to bypass the World Court, the very body set up to take care of such situations.

It must be remembered that the World Court is made up of 14 foreign judges and only 1 American judge, several being from Communist or Communist-controlled countries. The concept of law in many of these countries differs entirely from our concept. One of the greatest differences being that in some of these countries a person is considered guilty until proved innocent which is directly opposite of our concept of law. There is a whole of a difference between those two concepts.

Americans shudder when they think of whose law will prevail in a court of justice made up of such philosophies.

In 1950, a prominent representative of our own State Department said there is no longer any difference between domestic and foreign issues so where is the assurance that any issue that those in control of the World Court would want to consider would not be considered by them? This could range from foreign

aid, immigration, civil rights, expropriation of American property abroad and even to our defense bases in other countries. There would be no limit as to what could be brought before that Court.

To imply that because the International Court of Justice has never, yet, usurped jurisdiction not belonging to it, is a guarantee that it never will is wishful thinking, for once we have surrendered the right to make our own decisions, affecting our liberty, we can expect anything to happen.

If the World Court does not intend to interfere into our domestic affairs, why are they so anxious to repeal this safeguard?

Gentlemen, we ask you to reject Senate Resolution 94.

Respectfully submitted.

LOUISE O. NEIL, D.O.,

Advisory Chairman, "United States Day" Committee of Bergen County, N.J.

RIDGEWOOD, N.J., January 27, 1960.

Mr. DARRELL ST. CLAIRE,
Chief Clerk, U.S. Senate Foreign Relations Committee, Senate Office Building,
Washington, D.C.

DEAR Mr. ST. CLAIRE: Thank you very kindly for your message advising that public hearings on Senate Resolution 94 have been scheduled for today.

I respectfully request that the enclosed copy of letter which I wrote to my Congressman in December be inserted in the record of hearings on the above-named resolution.

Thank you again for your thoughtfulness in advising me so promptly.

Very truly yours,

J. McCONNELL

Mrs. J. McConnell.

RIDGEWOOD, N.J., December 19, 1959.

Hon. WILLIAM B. WIDNALL,
Republican from New Jersey,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN: "Six words stand between us and world government," a New Jersey newspaper quoted a speaker who addressed a recent meeting of the New Jersey Chapter of the National Society for Constitutional Security. "The campaign in the Senate to repeal the Connally amendment is sparked by Senator Hubert Humphrey who gained much importance in his own eyes when Khrushchev granted him hours-long interviews. The Senator proposes that we win friends abroad by submitting our destinies to the World Court whose prestige would thereby be so enhanced that other nations would follow suit.

"A world government, as far as we are concerned, would be made up of 99 percent foreigners who would have the power to (1) tax us; (2) make and enforce our laws for us; (3) accuse, try, and punish us; (4) coin money; (5) nullify our immigration laws; and (6) relocate entire populations at will. We would lose the protection of our troops by having them scattered all over the world.

"We are a peace-loving people. Why should we subordinate our flag, our Government, and our freedom to a world government controlled and dominated by foreigners? Once we have joined such an organization we will have no means at our disposal for withdrawing from it should we decide we had made a mistake. The United States would be disarmed; it would be bankrupt and the American people would have lost their liberty."

There are increasing rumors that there is going to be an all-out action by certain groups to repeal the Connally amendment. The Texas Bar Association at its annual convention in Dallas, adopted a resolution opposing the Humphrey proposal on the grounds it would seriously impair the sovereignty of the United States and effectively vest the power to amend the Constitution of the United States in a foreign tribunal. The United States has only 1 member on the 15-member Court. The Texas Bar Association is to be congratulated.

The World Court is an affiliate of the United Nations. We would be naive indeed to think that our interests would be protected. Only last evening one of our newspapers told us "the effective U.S. majority of 10-1 on the U.N. Security Council probably will dwindle to an 8-3 on most votes in the new year. An 8-3 majority is just one vote over the margin of safety, for seven votes are needed to pass any proposal. It used to be that a 10-1 vote was only

a moral victory for the United States, since the single negative vote was a Soviet veto."

The proponents of a World Court, if asked whether there is danger that the Court will infringe on matters that are purely domestic, say "of course not." If asked whether the Soviets will submit to the compulsory jurisdiction of the Court if we set the example, they say that the Soviets will ultimately be shamed into doing so. They have not yet explained why the revulsion of the civilized world did not shame the Soviets into stopping their slaughter of Hungarian patriots.

It is hard to believe that any elected official who has sworn to uphold the Constitution would contemplate such action even for a moment, or that any elected official would contemplate sacrificing the future of the children of our country in such a manner.

For your information, I enclose copy of a statement made by Mrs. Myra Hacker of West Englewood at a meeting of the Northern New Jersey Study Group.

I would appreciate very much receiving a letter from you stating how you stand on the subject of a World Court.

Very truly yours,

Mrs. J. McCONNELL.

P.S.—If Senator Humphrey and others who are backing his move do not want the World Court to interfere in our domestic affairs, why are they trying to get the safeguard repealed?

HILLSDALE, N.J., January 27, 1960.

CLERK, U.S. SENATE FOREIGN RELATIONS COMMITTEE,
Senate Office Building, Washington, D.C.

GENTLEMEN: I respectfully request that the following statement of the Bergen County (N.J.) Conservative Club chartered by the New Jersey Conservative Club be inserted in the record of the hearings on Senate Resolution 94.

"President Eisenhower, in asking Congress to repeal the Connally amendment, has advocated that the future of the Panama Canal be placed in the hands of the World Court. The Panama Canal is a vital link in America's defense system. Should we allow a Court made up of 14 foreign judges to make a decision which could seriously endanger the security of the United States? The agreement under which the United States participates in the World Court provides that the Court cannot interfere in domestic affairs, of a member nation. In order to define what constitutes domestic affairs, the Connally amendment added the clause 'as determined by the United States.' In a recent letter, Eisenhower expressed agreement with Senator Hubert H. Humphrey, Democrat, of Minnesota, that the phrase should be stricken.

"This is another blatant attempt on the part of forces who are working to undermine the sovereignty of our Nation and to promote the idea of world government. Should the safeguard of the Connally amendment be removed, we shall leave ourselves open to the subjugation of a world government administered by people whose concepts of justice, equality, and freedom are vastly different from ours. This difference has been displayed repeatedly in the treatment accorded members of our Armed Forces under the status of forces treaty."

Resolution S. 94 is designed to repeal the Connally amendment which consists of six words "as determined by the United States." The Bergen County Conservative Club respectfully requests that you reject this resolution.

Sincerely,

ROBERT A. KRETZER,
Chairman, Bergen County Conservative Club.

WEST ENGLEWOOD, N.J., January 27, 1960.

HON. J. W. FULBRIGHT,
Chairman and Members of the U.S. Senate Foreign Relations Committee,
Senate Office Building, Washington, D.C.

GENTLEMEN: I respectfully request that this letter be made a part of the record of the hearings on Senate Resolution 94, introduced by Senator Hubert Humphrey, March 24, 1959.

Senator Humphrey, through his resolution Senate Resolution 94, is asking for the repeal of the Connally reservation "as determined by the United States,"

which was attached to the World Court resolution in 1946. It is this reservation (amendment) which gives our country the right to decide for itself just what does and what does not constitute a domestic issue and therefore what issues concerning our country can come before the World Court.

With the World Court being composed of 14 foreign judges and only 1 American judge, several of the 14 being from Communist or Communist-controlled countries, whose law do you think will prevail in that Court?

The Texas Bar Association at its annual convention in Dallas adopted a resolution opposing the Humphrey proposal on the grounds it would seriously impair the sovereignty of the United States and effectively vest the power to amend the Constitution of the United States in a foreign tribunal.

A prominent representative of our own State Department, in 1950, said there is now no difference between domestic and foreign issues so we have no assurance as to what subjects the World Court might consider as proper to come before them. Such questions as our defense bases in other countries, our continued ownership and control of the Panama Canal, our tariff laws, immigration, foreign aid, and countless others could be thrown into the World Court for adjudication.

I will never understand why the very men who have sworn to defend and uphold the Constitution of the United States, as our duly elected representatives, would even dream of relinquishing our country's right to say what is and what is not a domestic issue. When we have given up this right we have no sovereignty left.

Your rejection of this Senate Resolution 94 is requested.

Most sincerely,

GERALDINE EARLIN,

Education Chairman, Legislation Study Club of West Englewood, N.J.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., January 27, 1960.

MR. CHAIRMAN: I appreciate having the opportunity to submit this short statement on behalf of myself and some of the residents of the district I have the honor to represent (seventh, Texas).

I oppose the repeal of the Connally amendment, and the surrender of U.S. sovereignty which would result from such repeal. I trust this honorable committee will refuse to put its stamp of approval on the repealing resolution.

The following citizens of my district have requested that their opposition be expressed:

Mrs. L. A. Flournoy, 314 North Popp Street, Nacogdoches, Tex.; Mrs. T. B. Strickland, Miss H. V. Strickland, Mrs. J. B. Chambers, all of Box 813, Nacogdoches, Tex.; Mr. and Mrs. John Y. Morgan, 1319 14th Street, Huntsville; Mrs. Joe Davis, 1106 Avenue O, Huntsville; Mrs. Wilburn Robinson, 1220 11th Street, Huntsville; Mrs. George Kearse, Richards Road, Huntsville; Mrs. John Smither, Post Office Box 551, Huntsville; Mrs. Wilbur Smither, 1312 Avenue O, Huntsville; Mrs. James A. Kesterson, 904 19th Street, Huntsville; Mrs. Earl Huffor, 1212 16th Street, Huntsville; Mrs. Ewing Bush, Huntsville; Mrs. Nell Burns, 1319 14th Street, Huntsville; Mrs. J. B. Hall, 1804 Pleasant, Huntsville.

Mr. W. H. Kellogg, 1322 Avenue O, Huntsville, Tex., requested that a copy of his telegram to the chairman be made a part of the record, as follows:

"I am informed that all persons wishing to testify on repeal of Connally amendment will have only the afternoon of Wednesday, January 27. Entire morning being given State Department who insist on this surrender of U.S. sovereignty over internal affairs. Please extend time of hearing so that all who wish to testify on this vital subject may be heard. Please advise by letter what domestic questions the advocates of repeal want decided by foreign judges of a one-world court and why they feel United States own court system inadequate on purely domestic cases. Also ask your honest opinion as to whether or not this constitutes treason to the United States and flagrant violation of oaths of office taken voluntarily by its advocates. Also ask this telegram be made part of official committee hearing minutes."

Thank you for your consideration of these viewpoints.

JOHN DOWDY,
Member of Congress.

ENGLEWOOD, N.J.

Senator J. W. FULBRIGHT,
Chairman, Senate Foreign Relations Committee.

DEAR SIR: I wish to protest the repeal of the Connally reservation. To surrender to a World Court jurisdiction over our own affairs, would destroy all our constitutional liberties and freedom. It is incredible that our leaders, sworn to defend our Constitution, would consider such a repeal.

In a World Court, many different ideologies and conceptions of justice would be represented. Everyone knows that Soviet Russia, for instance, would not accept the jurisdiction of the Court, but they would have judges on it. Our Bill of Rights could be destroyed.

Because I know that many thousands of wives and mothers in this country feel as I do, I am requesting that my letter of protest be included in the hearings.

Sincerely yours,

JANE G. (Mrs. R.) LYDECKER.

INDIANAPOLIS, IND., *January 27, 1960.*

Senator JOHN FULBRIGHT,
*Senate Office Building,
 Washington, D.C.:*

In the interest of protecting the United States Constitution from being subservient to the World Court, will you please vote against the Humphrey Senate Resolution No. 94?

Please include my letter in the printed hearings. Thank you.

Sincerely yours,

DOROTHY (Mrs. James L.) RICHARDSON.

EAST ORANGE, N.J., *January 28, 1960.*

Senator J. W. FULBRIGHT:

Kindly make this letter a part of the hearings.

By appeasement the most sacred rights of the United States are being liquidated while Communist aggression is permitted to flourish.

It is incredible that any true citizen of the United States is in favor of the repeal of the Connally amendment, August 1, 1946.

We need those six words "as determined by the United States." We are but 6 percent of the world. If the Senators had known that Communist agents (among them Alger Hiss) had actually helped to write the U.N. Charter perhaps the Senators would have read more carefully the charter-before ratifying it.

Don't destroy our Nation's sovereignty.

I strongly oppose the Humphrey resolution (S. Res. 94) that would impair our sovereignty.

My ancestors came to Massachusetts from England in 1628 to free themselves of the shackles of the Old World philosophy. Now some elected and appointed leaders of this Nation would eliminate the Constitution and convert this Republic into a Communist Socialist one-world government.

It is unbelievable.

GLADYS H. WATERMAN.

WEST ORANGE, N.J., *January 29, 1960.*

MY DEAR SENATOR CASE: I respectfully request that this protest be included in the record of the current hearings on repeal of the Connally amendment.

I realize that the World Court without absolute power is unable to demand obedience. However, in view of the fact that Soviet power is not shrinking; and in view of the fact that all, or nearly all, of the emergent nations are, at best, neutralist; and in view of the fact that Soviet control in the U.N. and in its agencies, and the World Court, is very, very persuasive, it does seem unwise to weaken control of areas that are of tremendous value in the fight for survival.

One example, of course, is control of the Panama Canal. This one item alone, should cause us to be doubly alert.

I hope you will feel that any further loss of control would grievously affect our position of strength, none too strong even at this moment.

Sincerely,

ISABELLE M. LONDON.

NEW ORLEANS MEETING,
RELIGIOUS SOCIETY OF FRIENDS,
New Orleans, La., January 29, 1960.

Senator J. W. FULBRIGHT,
U.S. Senate Office Building, Washington, D.C.

DEAR SENATOR FULBRIGHT: On behalf of New Orleans Meeting of the Religious Society of Friends (Quakers) I am writing to urge that your committee, the Senate Foreign Relations Committee, act favorably and promptly to repeal the legislation that prevents the United States from permitting disputes in which our Nation may be involved from going before the World Court without reservation.

In other words, and to put it positively, we are eager for action by this Congress which would advance the peace leadership of our Nation and put us more on the way to world peace. We feel that unqualified support of the World Court will be a good step in the direction of peace.

We would like to have our letter of support for the pending repeal legislation used in hearings in any way that seems effective, and to have it included for the record.

Yours very truly,

HENRY WHITE, *Clerk.*

LAKE COUNTY PROPERTY OWNERS' ASSOCIATION,
Hammond, Ind., February 3, 1960.

SENATE FOREIGN RELATIONS COMMITTEE,
U.S. Senate, Washington, D.C.

GENTLEMEN: Our attention was called to the Senate Resolution 94, that is presently pending before your committee regarding the jurisdiction of the United Nations International Court of Justice in all disputes between the United States and other countries.

Please be advised that our organization passed a resolution against the above-named resolution at its monthly meeting held on February 1.

We do not want our liberties surrendered to a world court.

Thousands upon thousands of members of our country fought and died to preserve the liberties of the United States. They did not fight and die to let our congressional Representatives give away our liberties to a world court.

There are many implications that could develop if our country would be under this Court's jurisdiction. Undoubtedly you are aware of these implications. This Court, packed with members and dupes of the Communist Party, would have jurisdiction over all areas of our lives.

The passage of Senate Resolution 94 would be tantamount to treason in view of the fact that many thousands of our Armed Forces gave their lives to preserve our American heritage.

We sincerely hope that you, as statesmen, will give this letter your serious consideration and enter same into the records of the hearings as being against passage of Senate Resolution 94.

We trust that you will defeat this bill in the committee.

Very truly yours,

RAYMOND WAGNER, *Vice President.*

DISABLED AMERICAN VETERANS AUXILIARY, UNIT 17,
Hammond, Ind., February 4, 1960.

Senator J. W. FULBRIGHT,
Chairman, Senate Foreign Relations Committee,
Senate of the United States, Washington, D.C.

GENTLEMEN: The above unit of the Disabled American Veterans passed a resolution at its recent meeting against Senate Resolution 94, which would nullify the Connally amendment.

Do not surrender our liberties to a world court.

It is time for our representatives in Congress to awaken to the serious implications of the above bill now before your committee.

Millions of Americans fought to preserve our liberties. Many hundreds of thousands died for freedom. Hundreds of thousands of veterans are disabled today from the battles of yesteryear.

Our Armed Forces have won the wars but now our congressional representatives will lose the peace by surrendering our liberties to a world court.

Were all the past wars in vain, gentlemen? How can your committee even consider such a resolution as you now have before your committee?

We cannot conceive any responsible statesmen willing to subject the great principles that we have developed in America to destruction by an alien majority of Communist judges in the U.N. International Court of Justice.

This Resolution 94 is detrimental to the freedom of America and it should not be brought out of committee.

We respectfully request that this letter be read before the committee's hearings and also entered into the records of the hearing.

Respectfully yours,

ETHEL HOWELL, *Legislative Chairman.*

HAMMOND, IND., *February 4, 1960.*

SENATE FOREIGN RELATIONS COMMITTEE,
U.S. Senate, Washington, D.C.

GENTLEMEN: Considerable attention has been aroused by recent press coverage of your committee hearings pertaining to Senate Resolution 94, regarding the jurisdiction of the United Nations World Court over the United States in jurisdictional disputes.

The passage of the above resolution would jeopardize our way of life by a Court that is not subject to common law or the American system of constitutional law. This Court will undoubtedly be loaded with Russian bloc members and Communist dupes who would have jurisdiction over all areas of our lives, for Congress will no longer control our—

Trade and tariffs.

Civil rights.

Economics and education.

Foreign trade.

Immigration and emigration.

International Bank for Reconstruction and Development.

Mental health and birth control.

Post office and censorship.

The military.

Welfare.

The Panama Canal.

I do not believe that any of you American statesmen are willing to jeopardize our American way of life, our liberty, and our pursuit of happiness by placing same in the hands of judges who are an alien majority.

I urge you to defeat this bill, Senate Resolution 94, in your committee.

Kindly include this letter in the records of the hearing on the above bill as being against it.

Sincerely yours,

Mrs. GLADYS DORNICK.

MINNEAPOLIS, MINN., *February 4, 1960.*

DEAR SENATOR FULBRIGHT: I urgently request you to vote against Senate Resolution 94, which would delete from our treaty to establish the World Court the Connally amendment.

It is inconceivable that any loyal American would surrender to an international body the right to decide jurisdiction in a matter which could mean life or death to our Nation, such as control of the Panama Canal, our overseas bases, immigration, or tariffs.

I further request that you make this letter a part of your hearing record. Thank you.

Sincerely,

EDWINA S. (Mrs. A. I.) CURTIS.

UNITED CHURCH OF CHRIST,
COUNCIL FOR CHRISTIAN SOCIAL ACTION,
New York, N.Y., February 8, 1960.

Hon. J. W. FULBRIGHT,
*Chairman, Foreign Relations Committee,
Senate of the United States,
Washington, D.C.*

DEAR MR. FULBRIGHT: If the record of hearings on Senate Resolution 94 is still open, I would be glad to have entered in it the statement recently adopted by the Council for Christian Social Action of the United Church of Christ.

Among the "actions" recommended to the people of the United Church of Christ, in an official policy statement adopted on January 30, 1960, was the following:

"Work toward an international system of laws, courts, and police power on which the nations can rely for protection. One immediate and practical step in this direction needs the support of all citizens; namely, the repeal of the Connally amendment to the U.S. treaty of adherence to the World Court. This amendment stipulates that the United States reserves the right to decide if disputes involving it may properly be brought before the Court. The President has asked the Senate to repeal this amendment. Letters favoring repeal should go to Senators and to the President."

Will you be good enough to let me know if this is being entered in the record?

Sincerely yours,

HERMAN F. REISSIG.

COMMITTEE FOR THE CONNALLY AMENDMENT,
New Orleans, La., February 9, 1960.

Hon. RUSSELL B. LONG,
*Committee on Foreign Relations,
Senate Office Building, Washington, D.C.*

DEAR SENATOR LONG: Attached herewith are signed petitions by sincere constituents who are gravely alarmed at the serious situation in both the Senate and the House of Representatives in Washington.

I am writing to you and the other members of the Committee on Foreign Relations on behalf of the above-mentioned persons—and I add—this letter is also written to express for the many, many people unable to sign a petition or write a letter in defense of the Connally amendment. Please present these petitions to the Committee on Foreign Relations at the scheduled open hearing on Wednesday, February 17, 1960.

The signers as shown on the enclosed petitions want to retain the Connally amendment, as it is; namely, "as determined by the United States."

Since this issue is of such major proportions and could effect the entire Nation as a whole—regardless of the very shallow defense as presented and stressed by the International Committee of the American Bar Association, Mr. Herter, Mr. Kennedy, etc.—would not a plebiscite be a more American approach?

Let not the committee forget the taxpayer has everything to lose. Because many in Government in Washington today—are seemingly fellow travelers and pushers for the socialistic trend to convert this fine country into a state or province in the planned new world order, the majority of we the people—do not agree.

Mr. Long, we, the signers, would appreciate an answer to this letter and enclosure, plus the results of this open hearing—if any decision is reached—and why. In the event there is to be a further hearing in this regard we would like the date in advance plus any helpful information.

Thanking you in advance for your sincere American consideration and action.

Yours very truly,

Mrs. JOHN W. MEEHAN, Jr.,
Committee for the Connally Amendment.

(The petitions referred to above are in the committee's files.)

THE AMERICAN LEGION,
DEPARTMENT OF TEXAS,
Houston, Tex., February 11, 1960.

Hon. J. WILLIAM FULBRIGHT,
Chairman, Senate Foreign Relations Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR FULBRIGHT: The 8th and 22d districts of the American Legion, Department of Texas, comprising posts in Houston, Tex., adopted the following resolution in opposition to Senate Resolution No. 94, dealing with the World Court now being considered by your committee.

We feel that adoption of the Humphrey Resolution No. 94 will be gravely injurious to the United States, and urge your committee to vote against submitting the resolution to a vote of the Senate.

We respectfully request that this letter and the attached resolution be made a permanent part of the records of the proceedings of the hearings February 17, 1960, on this subject.

Sincerely,

ANTON BILY,
District Commander, 22d District, Department of Texas.

Whereas there is now before the U.S. Senate Resolution No. 94, a resolution to amend the agreement this country has with the World Court, which amendment, if adopted, will deny the United States the right to decide for itself what cases involving this country are internal affairs of the United States and therefore not subject to the deliberations of the World Court; and

Whereas the American Legion believes that adoption of this amendment by the Senate will endanger the sovereignty of the United States, deprive our citizens of their constitutional rights to be tried before an American court when such citizens become parties to a case being tried before the World Court, and endanger treaties this country has with friendly nations; and

Whereas American Legion posts of the 8th and 22d districts, the Department of Texas of the American Legion, and the National American Legion in convention assembled have gone on record as vigorously opposing any change in the status of the United States with respect to the World Court; and

Whereas we firmly believe that Senate Resolution No. 94 is a vicious plan to further plunge this country deeper into the quagmire of international plots and politics: Therefore be it

Resolved, That this bidistrict meeting of the 8th and 22d districts, Department of Texas, assembled this 10th day of February 1960, does hereby reaffirm our unalterable opposition to Senate Resolution No. 94, and that we immediately forward copies of this resolution to the two Senators from Texas, Lyndon B. Johnson and Ralph Yarborough, and to Representatives Albert Thomas and Bob Casey, and to Senator J. William Fulbright, and insist that they oppose Senate Resolution No. 94; and be it further

Resolved, That we call upon citizens of Houston and Harris County, Tex., to write letters of opposition to Senate Resolution No. 94 to Senators Johnson and Yarborough and Representatives Thomas and Casey.

Attest:

ANTON BILY, District Commander.

HOUSTON, TEX., February 11, 1960.

Hon. J. WILLIAM FULBRIGHT,
Chairman, Senate Foreign Relations Committee,
Senate Office Building, Washington, D.C.

DEAR SENATOR FULBRIGHT: We are addressing this plea to you to ask for your help and aid, as chairman of our Senate Foreign Relations Committee. We declare that we are citizens of the United States of American and residents of the State of Texas and are entitled to look to you for such aid and assistance.

We have either given in person, or had members of our family near and dear to us give their service in some war or wars against foreign foes to establish, protect, and maintain the rights, liberties, and independence of our beloved country, and many of them have sacrificed their lives in such service.

It is our purpose to emphatically express our opposition to the passage of the Senate Resolution No. 94, known as the World Court bill, which proposes

the repeal of the present statute passed several years ago establishing such World Court, in the part of such statute known as the Connally amendment which grants our Nation, the United States of America, the right of veto of any and all decisions of such World Court as may in any manner restrict, cancel, or destroy any right, liberty, or independence of our country.

We hereby go on record as being bitterly and unalterably opposed to the passage of such bill or any other which would result in such effect. And we urge you, as chairman of this committee, to use your every effort and influence toward the overwhelming defeat of this Senate Resolution No. 94 in committee and/or on the floor of the Senate.

We are awake and eagerly watching for any item of news pertaining to action for and against this bill and will not lessen our interest or efforts during the consideration that is given it and the final disposition that is made of it.

We also request that this protest be entered in the records of your committee hearing, which is scheduled for February 17, 1960.

B. M. ON.
C. D. WILSON.
DOTTIE A. POLLOCK.
ALICE M. EVANS.
MABLE HARE.

PORTLAND, OREG., February 12, 1960.

Re Senate Resolution 94.

HON. J. WILLIAM FULBRIGHT,
Chairman, Senate Committee on Foreign Relations,
Senate Office Building, Washington, D.C.

DEAR SENATOR FULBRIGHT: Will you kindly include in the record of the hearings on Senate Resolution 94 on February 17, 1960, my statement thereon which is attached to this letter. Thank you for your consideration of this request.

Respectfully,

WILLIAM L. JOSSLIN.

STATEMENT OF WILLIAM L. JOSSLIN, ATTORNEY AT LAW, PORTLAND, OREG., ON
SENATE RESOLUTION 94

Acceptance of the rule of law is the foundation of American Government and democracy. For 184 years, it has been our guiding principle and policy in our international relations. We have fought at least five wars to establish that justice and law rather than brute force, shall govern the relations of mankind. The Connally amendment violates these wise, fundamental principles and policies. It should be repealed by adoption of Senate Resolution 94.

SPOKANE, WASH., February 12, 1960.

HON. J. WILLIAM FULBRIGHT,
Chairman, Committee on Foreign Relations
Senate Office Building, Washington, D.C.

DEAR SENATOR FULBRIGHT: I send you the following memorandum, on Senate Resolution 94, in re elimination of self-judging clause from U.S. adherence to the International Court of Justice, which I request that you include in the record of the hearings of February 17.

MEMORANDUM OF BENJAMIN H. KIZER

As a lawyer and longtime member of the American Bar Association, I profoundly believe in the rule of law, as greatly preferable to the rule of anarchy or force in the field of international relations. I was deeply opposed to the Connally reservation to the adherence of the United States to the International Court of Justice, at the time of its adoption, believing that it largely nullified our adherence, and set a precedent for other nations that would cripple the usefulness of such a Court.

I rejoice that our American Bar Association, and President Eisenhower have both recommended that we delete the phrase "As determined by the United States of America." Time has demonstrated that this reservation is powerless for good, powerful for mischief, in that it tends to warrant lawlessness where settlement by legal adjudication is the only wise course.

If we sincerely and wholeheartedly believe in world peace, we should favor the strengthening of such an instrumentality as the International Court of Justice, whose adjudications can help to preserve that peace.

Respectfully submitted.

BENJAMIN H. KIZER.

SALEM, OREG., *February 15, 1960.*

HON. J. WILLIAM FULBRIGHT,
Chairman, Committee on Foreign Relations,
Washington, D.C.

DEAR SENATOR FULBRIGHT: I understand there is to be a hearing before your committee with reference to the repeal of the Connally reservation, and I am accordingly writing you the result of my consideration of this question.

I have had something to do with the attempt of the American Bar Association to accomplish this repeal for several years. I attended one of the regional meetings, the one at San Francisco, held last fall, where the members of the American Bar Association discussed this question pro and con. It is growing out of these discussions and my consideration of this question that I express to you, and through you to your committee, the following sentiments with reference thereto, and ask that they be made a matter of record in your committee proceedings.

THE REASONS FOR REPEAL.

1. It is wholly unnecessary.

Article 34 of the Charter of the United Nations expressly provides that this Court shall not have jurisdiction over matters which are purely domestic. All the Connally reservation did was to say that we are the ones who are going to decide whether the question is domestic or otherwise. The question of what constitutes a domestic controversy is not so susceptible to misconstruction as to necessitate any such reservation.

2. It is a positive detriment.

The provisions of the charter are reciprocal. Other nations have construed this reservation as giving them the power to do the same thing, as evidenced by Russia's refusal to permit the Court of International Justice to consider our claim for shooting down our airmen over the China Sea. I am informed, and I believe reliably informed, although your committee, of course, would be in much better position to know with reference to this matter than we are, that we have never exercised our right under this reservation; that we set it up for our own protection, but it hasn't worked that way. It has backfired, so to speak.

3. It is a stumbling block to the efforts of the American Bar Association to get other countries to adopt its program of "world peace through law."

We cannot in good faith urge other countries to submit their international controversies to this Court so long as we say to them, "We will decide whether or not we will submit." Does not the Good Book say, "Thou hypocrite, cast out first the beam out of thine own eye, and then shalt thou see clearly to pull out the mote that is in thy brother's eye"?

4. The effect of this reservation and the fact that it is reciprocal is to make the International Court of Justice a Court of very limited jurisdiction.

No system of courts would ever prove to be a success if it were left to the parties litigant as to whether or not they would submit to the jurisdiction of the Court.

5. It is not necessary to protect our national sovereignty.

There is a feeling, which was very much stronger at the time of the Connally amendment than it is today, that without some such stopgap as this, the United States would be surrendering some spark of its national sovereignty. I believe there is a misconception of the true meaning of the term "national sovereignty."

Heretofore, in connection with my work along this line, I prepared a paper attempting to define, or at least describe the term "national sovereignty," and I herewith enclose a copy of it for your consideration, and the consideration of your committee. As I there argued, I do not believe it is necessary to have any limitation on this Court other than those limitations already contained in the charter in order to protect our national sovereignty.

Very respectfully yours,

W. C. WINSLOW.

NATIONAL SOVEREIGNTY

(By W. C. Winslow)

The word "sovereignty" is much misunderstood. It is often so loosely used as to have no precise or definite meaning. Judge Story, in his work on the Constitution, Commonwealth, volume 32, page 210, paragraph 207, said: "The term 'sovereign' or 'sovereignty' is used in different senses which often leads to a confusion of ideas and sometimes to very mischievous and very unfounded conclusions."

The Supreme Court of South Carolina, in *State ex rel. McCready v. Hunt*, 2 S.C. 522, (*250), said: "What is the meaning of sovereignty? And who is the sovereign in this country? It is to be lamented that many terms in common use are very inaccurately defined; indeed there are many of those in the most common use, and which men continue to repeat supposing that they understand them, to which, upon reflection, they will find that they attach no precise or definite meaning."

The promiscuous use of this term has resulted in confusion worse confounded. So often we hear some radio commentator, orator, or statesman proclaim, "I stand for the United Nations and America's participation therein so long as it does not impair our national sovereignty." Recently, during U.N. Week, I heard similar statements over the radio from seven different speakers. What does the expression mean? The force of such a remark or exclamation is entirely lost, unless we know what is meant by "national sovereignty." Many attempts have been made to define the term and so many meanings have been evolved as a result thereof that today the term almost defies definition. For the sake of clarity, I shall attempt to describe rather than define it. Let us start by saying that it is a relative term and like most terms or words has different meanings, depending on the sense or field in which it is used.

There are two kinds of sovereignty—external and internal. No American who is at all familiar with the history of the adoption of our Constitution would contend that our National Government possesses internal sovereignty, if that term is to be considered as in any sense absolute. That power is reserved to the States (see 10th amendment). The Constitution does give to our Federal Government external sovereignty. That is the field in which we are trying to describe the term.

A description is sometimes aided by a comparative analysis. Let us compare this term "national sovereignty" with the expression "personal liberty." Again, we are confronted with difficulties. What is the meaning of the term "personal liberty"? Does it mean the absolute right of the individual to act as he pleases? No thinking person would so contend.

Many years ago, Blackstone said, in 1 Blackstone's Com. 125: "Civil liberty, which is that of a member of society, is no other than natural liberty, so far restrained by human laws, and no farther, as is necessary and expedient for the general welfare."

In *Weber v. Doust*, 146 Pac. 623, the Supreme Court of Washington said: "There is much fault in the general conception of liberty. Man, in his natural state, may have natural liberty if he has the physical power to maintain it. In his civil state he must yield the natural right to obey his impulses and to go at will to the social compact, whatever may be its form. In return society gives to all who subscribe to its forms a guarantee it will protect him in those 'civil' rights which by nature or by due ordination of law are recognized as essential to the health, peace, and happiness of the greater number."

The Appellate Division of the Supreme Court of New York, in *Fitzsimmons v. N.Y. State Athletic Commission*, 146 N.Y.S. 117, said: "'Liberty' is a word with a double meaning. In a negative sense it means freedom from restraint. In a positive sense it secures freedom by the imposition of restraint. It is in this positive sense that the State, in the exercise of its police and general welfare powers, promotes the freedom of all by the imposition of such restraints upon some as are deemed necessary to secure the general welfare" (p. 121).

Or, as Daniel Webster put it in that famous speech delivered by him before the South Carolina Bar Association: "Liberty exists in proportion to wholesome restraint."

We gather from the foregoing that wholesome restraints enhance rather than impair one's personal liberty. These statements deserve profound consideration. Even the restraints placed upon one's action by the laws of nature tend to add

to rather than detract from one's personal liberty. One is at liberty to walk into his own orchard and eat green apples, but some of us at least will pay for it with a stomach ache. Or one may expose himself to inclement weather and extreme fatigue, and contract pneumonia and pay for his foolhardiness by spending a season of his time in bed. If he had obeyed the mandates and restrictions of nature, he surely would have enhanced his personal liberty. The same principle holds true when we move into the realm of manmade restraints. Our traffic regulations, our sanitary restrictions, our pure-food laws are all wholesome restraints on one and all members of our community. But who will contend that these restraints do not enhance our personal liberty. By these laws, one is not permitted to drive where he pleases, to sell what he pleases, or to dispose of his garbage where he pleases. Nevertheless, by these same restrictions, he may drive in comparative safety, eat pure food, and enjoy life without the stench and contamination of his neighbors' sewers and debris.

Many more illustrations could be given, but these will suffice to demonstrate the soundness of the doctrine taught in the Declaration of Independence that "all men * * * are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that to secure these rights, governments are instituted among men * * *."

It thus appears that our Founding Fathers recognized that to secure the sacred right of personal liberty, governments are instituted among men. How do governments secure our liberty for us? By making wholesome restraints against us and our neighbors—restraints necessary to secure the common welfare.

Now, having made this detour, let us return to our subject.

It is just as impossible for nations to live together without law, regulations, and restraints as it is for individuals to live together without such.

If every nation construes sovereignty to mean the absolute right to live and do as it pleases, without regard to the rights and welfare of other nations, then an international society is impossible, and war and chaos are inevitable. As thus construed, sovereignty would be worth less than nothing. For sovereignty is meaningless and useless unless it is recognized by other nations. Nations will never recognize the sovereignty of other nations which reserve the right to do as they please. Recognition comes only when nations agree to fulfill their international obligations and live and let live.

To illustrate. For many years the United States consistently refused to recognize the sovereignty of the Union of Soviet Socialist Republics on the ground that, "admitting its stability, it had shown unwillingness to recognize and discharge its international obligations." Secretary Hughes, November 21, 1923. A.J. XVII 206 F. If the price of recognition of national sovereignty is respect for and discharge of international obligations, this is a restraint upon sovereignty. But if the same restraint is likewise placed upon the sovereignty of other nations, our sovereignty has thereby been enhanced because, under such restraints, all nations, theoretically at least, must fulfill their obligations.

How did society arrive at its present status? Let us unfold a few pages of history. What do we learn? The first man who walked in the gray dawn of time lived every man for himself—his heart a sanctuary of suspicions—feeling that every other man was his foe and, therefore, his prey. He was sovereign.

"Mootless are they and lawless on the peaks. On mountains high they dwell in hollow caves. Where each his own law deals to wife and child. In sovereign disregard of all his peers" (Odyssey, Book IX, 11-112-15).

Often there was strife and bloodshed. The survival of the fittest.

But man is essentially a social animal. Slowly there came to him, even in this savage state, a gleam of the truth that it is better to help than hurt. He prescribed rules, regulations, or restraints. Menger and crude and inadequate, it is true, but these rules or restraints made it possible for the family, then the clan, then the tribe, to live together with some degree of peace and harmony.

Tribes were divided by rivers and mountains, and the men on one side of the divide felt that the men on the other side were their enemies. Again there were war, pillage, and sorrow. Again, further restraints, dictated by experience, were established, binding tribes together into small nations and small nations together into empires. Commerce brought the ends of the earth together. Men met, mingled, passed and repassed, and learned that human nature is very much the same everywhere, that man's hopes, aspirations, and fears are very much in common.

Still, nations and empires were separated, if not by natural barriers, by man-made mountains of prejudice, rivers of misunderstanding, seas of lust and greed. Still there was war on both land and sea. Pacts, coalitions, leagues, and alliances, both holy and otherwise, were formed among nations and groups of nations. Even this did not establish world peace. Jealousy arose between these groups of nations.

From an international standpoint, the assassination of an archduke by a fanatical college student was rather an insignificant event, but the flame from that spark almost engulfed the world. Twenty-seven nations were involved in that conflict, and history now records it as the First World War—the war to end wars.

More restraints, the covenant of the League of Nations, disarmament, World War II. More restraints, United Nations.

True we see some setbacks, breakdowns, and retarding influences as civilizations rise and fall, but generally there is progress.

In all this development has national sovereignty been impaired? On the contrary, has it not been materially enhanced? May it not then truly be said that national sovereignty, like personal liberty, exists in proportion to wholesome restraints?

But some will say that national sovereignty means and includes the right of a people to determine when and under what circumstances they will go to war. Granted.

We have taken a very brief glimpse into the past. Let us attempt to do the same into the future. From this review of the past, especially the recent past, isn't it now clear to the candid and thinking mind that any major war in the future will again involve substantially the whole world?

We are now talking about world war III. In contemplation of such, we have helped form the North Atlantic Pact. If worst comes to worst and there must be another world war, we expect to help other nations and we expect other nations to help us.

Is this an infringement upon our national sovereignty? It is true some contend it is. But the greater opposition to the North Atlantic Pact came from those who felt, and still feel, that which the North Atlantic Pact attempts to accomplish should have been worked out through United Nations. Certainly Russia would have blocked it. The United Nations was formed for the purpose of making it possible for men to live together in one vast neighborhood in peace and harmony. To quote the preamble, "The first end * * * to practice tolerance and live together in peace with one another as good neighbors."

If Russia or any other nation can effectively defeat that purpose, then it is time to revise the United Nations or close its books and organize a new institution which can attain these ends.

All this refers to the means by which the end result is to be accomplished. The end result, of course, is abolition of war. If there is to be another world war, we know now we will be in it. How can it be otherwise? We have already made commitments which, if we are in good faith to keep and perform, we must be a part of it. As late as January 1960, there was signed in Washington, D.C., with much "pomp and ceremony" a treaty with Japan whereby both nations America and Japan agreed to come to the aid of the other if attacked. Now under these circumstances, is it not the exercise of national sovereignty, regardless of the institution or means by which it is accomplished, to make arrangements now so that we will have some help when the conflict comes?

It may be that to accomplish this we will have to agree to some restraints; but if we accomplish our purpose, is this not only the best and wisest exercise of our national sovereignty but likewise an enhancement thereof? And if perchance we, in cooperation with other nations, can attain the ends and aims of United Nations, have we not in the exercise of our national sovereignty accomplished the ultimate; world peace?

Yes, we declared war on Germany in World War I voluntarily. And how did we fight that war? Our contribution was only a part of a tremendous line commanded by Marshal Foch. Would anyone contend that our national sovereignty was infringed because General Pershing took orders from Marshal Foch?

In World War II, Germany declared war on us and in the "great crusade" General Eisenhower was in command. Notwithstanding General Montgomery's present unhappiness, no one has suggested that England sacrificed her national sovereignty because he took orders from General Eisenhower.

Is there a distinction between declaring war, and dictating its course and strategy, from the standpoint of national sovereignty? And if, in the next war, we are to have allies, might it not be the exercise of our national sovereignty to consult them about the advisability of declaring war? Are we to do the declaring and then say to our allies, "Come on, you promised to help"? Or are they to do the declaring, as they have in the past two world wars, and then say to us, "Come on, fulfill your obligations"? Would not our declaration of war in this latter case be a mere formality? Would it not follow as a necessity of the agreement to help these other nations? We would be exercising our national sovereignty when we make those commitments. And if it is of advantage to us to have the assistance of other nations in world war III, are we not exercising our national sovereignty in making such arrangements?

That the world today is just one big neighborhood is no longer subject to argument. Today we go from London to Shanghai, or from Moscow to Washington, in less time than our forefathers traveled 25 miles. Today we know the news from Tokyo the day before it happens, and we have only commenced to annihilate distance.

Now one of two things must happen. We must learn to live together as neighbors, as primitive man finally did, or we can refuse to grow up and continue to fight among ourselves.

Toynbee tells us that 26 civilizations have failed. Are we big enough to save ours?

It is with the hope that the failure to understand the true significance of national sovereignty will not be the stumbling block that will defeat us, that these lines are written. Big armies and navies have failed. Coalitions, alliances, pacts, federations, and leagues of nations have failed. Power politics have failed.

Why not try world peace through law? Why not settle international disputes as we now settle private controversies? Basically, is there anything wrong with the idea? What is law for, but to regulate the relations of men in their intercourse one with another? Our agreement to a method of settling international disputes by law would be the exercising of our national sovereignty. To argue that the abolition of war would destroy national sovereignty would be to argue that it is necessary to have a war every so often to maintain our sovereignty. No greater fallacy could be imagined. No vestige of domestic sovereignty has been infringed upon because we settle our private controversies by law through courts. If national sovereignty means and includes the right to declare war, and if through the exercise thereof we dispense with the necessity of declaring war, this would not be an infringement upon our national sovereignty, but its supreme triumph. Why not try peace through law? We have tried everything else.

STATE OF ARKANSAS,
OFFICE OF THE GOVERNOR,
Little Rock, February 15, 1960.

Senator J. W. FULBRIGHT,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: I have noted with increasing interest the controversy in the Congress over jurisdiction of the World Court, known as the United Nations International Court of Justice.

In November 1945, Senator Wayne Morse introduced a resolution in the Senate, and Congressman Herter a House joint resolution, to the effect that the United States would accept compulsory jurisdiction of the World Court, but that the Court would not have jurisdiction over "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States."

When this resolution came before Congress, the question arose, "Who will determine when a matter is essentially domestic?" Obviously this could not be left to the Court. So Senator Connally proposed and had written into the resolution what has come to be known as the Connally reservation. This consists of six words (as italicized), and revised the resolution as follows: "Matters which are essentially within the domestic jurisdiction of the United States *as determined by the United States.*"

This is the reservation which President Eisenhower demanded be repealed in his recent state of the Union message.

The World Court, as presently constituted, consists of 15 judges, and the United States would have 1 judge in this number.

Therefore, I am unalterably opposed to the adoption of the Eisenhower recommendation. Certainly, we can count on the fairness of the United States in determining which matters are essentially of domestic jurisdiction. I can see no possibility of any interference with the functions of the World Court by the retention of the Connally reservation in the act or resolution as adopted by the Congress in 1945.

I certainly believe that the great majority of the people of Arkansas will also object to giving the World Court any jurisdiction whatsoever over any of the domestic affairs of this Nation. It would, therefore, be in accord with the wishes of the people of Arkansas that the recommendation of President Eisenhower be rejected by the Congress, and the Connally reservation retained in the original resolution.

Most sincerely,

ORVAL E. FAUBUS, *Governor.*

THE UNITED STATES FLAG COMMITTEE,
Jackson Heights, Long Island, N.Y.

Hon. WILLIAM FULBRIGHT,
Chairman, Senate Foreign Relations Committee,
Senate Office Building, Washington, D.C.

DEAR CHAIRMAN: We are drastically opposed to Senate Resolution 94 on many points, all of which we believe every elected officer should likewise be opposed.

1. We believe, like millions of loyal Americans, that this would mean a form of world government which, according to our Constitution, cannot be put into effect by a vote for such a resolution as Senate Resolution 94.

2. Does the oath of office to protect the Constitution mean anything anymore? Or is it as meaningless as the promises of the Kremlin? If your oath does mean anything, then we contend that to keep it would prevent you from voting for Senate Resolution 94. To place us under the World Court would eventually destroy the power of our Constitution.

3. Does our entity as a nation mean anything to you, as it does to countless American citizens? Do you believe you have a right to make a decision for all Americans that will weaken our power and prestige, and finally destroy us as an individual nation? We do not. We the people have a right to retain our citizenship, free from dictatorship and domination of such a foreign power as the International Court.

4. It seems to us disloyalty, and almost unbelievable that our high ranking elected and appointed servants of the people (something that is evidently forgotten) should even contemplate such a giveaway of our rights as citizens of the United States of America.

5. We consider this would be a national suicide and that is called a crime.

Therefore, we pray to God that our Congress will be guided in this crisis, that we may be able to keep our independence which some of us still prize and cherish.

Sincerely,

HELEN P. LASELL, *Chairman.*

P.S.—Please place this in the printed hearings and send us a copy when available.

(Mr. Harold L. Putnam, executive secretary, the National Society of the Sons of the American Revolution, Washington, D.C., submitted the following resolution for inclusion in the record:)

RESOLUTION ADOPTED BY THE 69TH ANNUAL CONGRESS OF THE NATIONAL SOCIETY OF THE SONS OF THE AMERICAN REVOLUTION, AT PITTSBURGH, PA., MAY 17-20, 1959

RESOLUTION 2—WORLD COURT RESOLUTION

Whereas a proposal to expand the powers of the World Court has been submitted to the Senate of the United States whereby the American Government would relinquish its power preserved by the Connally amendment of 1946 to determine what American cases before the World Court are international in character and which cases are domestic in nature to be left for American courts; and

Whereas the removal of such condition by the Senate would seriously impair the sovereignty of the United States and vest in an essentially foreign tribunal a potential power over purely domestic matters involving the basic rights of American citizens should such foreign power so determine; and

Whereas the Supreme Court of the United States even though consisting entirely of American citizens and functioning in the United States has, in the opinion of eminent constitutional lawyers, decisively invaded the constitutional rights of individuals and States indicating the acute danger of similar action by a foreign tribunal; and

Whereas such impairment of American sovereignty can well serve as a steppingstone to complete world government by those groups endeavoring to propel the American Nation into such alien control: Now, therefore, be it

Resolved, That the National Society of the Sons of the American Revolution hereby requests the Senate of the United States to reject emphatically all efforts aimed at impairing the sovereignty of the United States through abandoning the present power of the American Government to limit the jurisdiction of the World Court to purely international affairs.

ROCKY MOUNT, N.C., February 17, 1960.

Re Senate Resolution 94 and elimination of self-judging clause from U.S. adherence to the International Court of Justice.

Senator J. WILLIAM FULBRIGHT,
Chairman, Committee on Foreign Relations,
Senate Office Building, Washington, D.C.

MY DEAR SENATOR: I earnestly urge your committee to approve the above resolution and eliminate the self-judging clause contained in the Connally amendment. The United States faces its greatest challenge and greatest opportunity in its role as the leader of the world in promoting justice under law in international affairs as it has done in national affairs. If we accept this challenge and provide the needed leadership, it will fulfill the truly historic calling of our country. We know that this job must be done step by step. The first step and the step to be taken at this time appears logically to be the acceptance of the jurisdiction of the World Court. We earnestly solicit your continue enlightened and vigorous leadership in this field. We would appreciate your including our letter in the record of hearings of your committee.

Thanking you, we are,
Yours very truly,

THORP, SPRUILL, THORP & TROTTER,
By WILLIAM L. THORP, JR.

UNITARIAN FELLOWSHIP FOR SOCIAL JUSTICE,
Washington, D.C., February 19, 1960.

Senator WILLIAM J. FULBRIGHT,
Senate Office Building,
Washington, D.C.

DEAR SENATOR FULBRIGHT: I am writing you to present this letter to the Foreign Relations Committee in support of the resolution before the committee to repeal the Connally amendment to our participation in the World Court.

It is the feeling of the Unitarian Fellowship for Social Justice that the Connally amendment has nullified our participation in the World Court. We believe that the World Court fulfills a very important function in world relationships today. The repeal of this amendment will show to the world our good faith in using a court of international justice.

We have learned that in the various hearings you have held on the repeal of this resolution, that there has been considerable resentment against repeal of the resolution. We are writing this letter for inclusion in the record because we feel so strongly the necessity for its repeal. It is absurd, to say the least, that persons who have appeared before your committee have suggested that if the Connally amendment were not enforced that the World Court would enter into our domestic affairs and tell us what we should do regarding tariffs, rates through the Panama Canal, immigration policies, etc. As the Washington Post said editorially, "This is nonsense."

We are very happy to join in the nonpartisan effort which is supported by the President and the Vice President and Senator Humphrey and yourself to bring about a change in our relationship to the World Court. We hope, that without undue delay, your committee will report favorably on the resolution to repeal the Connally amendment.

With great respect for the work of your committee, and assuring you of our continued interest in all of your actions,

Sincerely,

MURIEL A. DAVIES, *President*.
Mrs. A. Powell Davies.

ARLINGTON, VA., February 21, 1960.

Hon. J. W. FULBRIGHT,
Chairman, Senate Committee on Foreign Relations,
Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your public notice that the record would be kept open for 10 days to allow for filing additional statements, I am taking the liberty of enclosing a copy of the letter published February 8, 1960, in the Washington Post, and a copy of the unpublished answer to the questions raised by the editor of that newspaper.

I am opposed to Senate Resolution 94 on the ground that it represents just another phase of the general confusion of the rules without meeting the problem nor coming to grips with the real issues involved.

Wherefore, it is most respectfully requested that this letter and the two enclosed letters to the Washington Post be included in the record of the hearings on Senate Resolution 94 as and for my public statement and testimony in opposition to such form of misrepresentative government.

Thank you very much for your kind attention and thoughtful consideration in this matter in which so much public confusion has been manifested.

Faithfully yours,

JOHN BRADLEY MINNICK.

FEBRUARY 1, 1960.

Mr. ROBERT H. ESTABROOK,
Editor, the Washington Post,
Washington, D.C.

DEAR MR. ESTABROOK: In rejoinder to your editorial concerning the proposed "repeal" of the condition to the acceptance of the "statute" which created the World Court, it ought to be remembered:

1. The "statute" was not enacted by a representative body of the people of this or any other nation. Accordingly, the Court has no foundation in fact nor rule of law to support it from the beginning.

2. Ratification of the "statute" under the authority of the United States, however, metamorphosed this diplomatic dilemma into the supreme law of the land by constitutional definition. Accordingly, we are bound by it whether we like it or not.

3. The rule of law which binds the United States has no extraterritorial effect, except by force of arms. Accordingly, nonaggression and mutual defense treaties become considered to be necessary and advisable.

4. To the best of my knowledge, information, and belief (please correct me if I am wrong), no other people of the world has adopted an irrevocable constitution containing an unequivocal rule of law such as is to be found in the supremacy clause of our Constitution. Accordingly, it is manifest upon the face of the record that we are bound by a rule of law which is not binding upon the rest of the world. (Please correct me if I am mistaken in my conclusion.)

Under existing principles (rules of law) of our Anglo-American jurisprudence, it is recognized that an agreement which lacks mutuality of obligation is unenforceable. Wherefore, pray tell why we ought to advocate the "repeal" of the only check and balance left open to us without calling the whole thing off to the utter embarrassment, chagrin, and frustration of our conscientious diplomats who dreamed it up?

On the other hand, if we are to have a rule of law for the world, let's get one which is binding on everybody and which every responsible citizen in every

nation will swear to support and defend from the beginning. Then we will have an informed and an intelligent public opinion upon which to base the elimination of war and the threat of war to the everlasting reduction of the national debt and the tax burden of the people of the United States.

Thank you very much for your courtesy and consideration in this matter in which considerable public interest has been shown.

Faithfully yours,

JOHN BRADLEY MINNICK.

FEBRUARY 8, 1960.

Mr. ROBERT H. ESTABROOK,
Editor, the Washington Post, Washington, D.C.

DEAR MR. ESTABROOK: Thank you for correcting me in certain minor particulars. The fourth paragraph, as corrected by your basic research, would read as follows:

4. No other people, except for Afghanistan, Austria, Bolivia, Brazil, and Colombia, have adopted an irrevocable constitution containing an unequivocal rule of law such as is to be found in the supremacy clause of our Constitution. Accordingly, it is manifest upon the face of the record that we are bound by a rule of law which is not binding on most of the world.

In answer to your first question why any great nation should want a check on (not against) international justice, it ought to be remembered that this great Nation from the beginning has established checks upon local, State, and National Justice and which we are sworn to support and defend. Accordingly, there is sound reason why we should insist upon a check on the World Court at least to the extent that we insist upon the checks and balances in our own State and Federal Constitutions. In this regard, it ought to be noted further that the corollary to the supremacy clause provides that State law shall be the rule of decision in the Federal courts unless otherwise provided or required by the Constitution, treaties, or laws of the United States. In effect, then, the reservation in our acceptance of the "statute" is merely an extension of this principle and related rules of law governing the jurisdiction of Federal and State courts.

In answer to your second question what difference does it make, it ought to be remembered according to your basic research that most of the world powers are not bound by any international rule of law, otherwise recent historical events could not have happened the way in which they have been reported in the public press. For an excellent recent summary, please see "Modern Constitutions," by Russell F. Moore, Littlefield, Adams & Co., 1957. Accordingly, the difference is whether we ought to accept the double standard of "Do as I say and not as I do" as a sufficient guarantee of peace on earth and goodwill toward men, or whether we are justified in requiring some more tangible evidence of good faith.

On your last point, it ought to be remembered at this time that Congress has no more power under our Constitution to nullify the domestic effect of a ratified treaty than the President and the Supreme Court have to enact new laws.

Public discussion and open debate ought not to be classified as a drag on world justice.

Thank you again for your courtesy and consideration in this matter.

JOHN BRADLEY MINNICK.

STATEMENT OF FRANK E. HOLMAN, ATTORNEY AT LAW, SEATTLE, WASH.

FOREWORD

By way of introducing myself, my name is Frank E. Holman, age 74, a lawyer from Seattle, Wash., and a past president of the American Bar Association (1948-49). For purposes of further identification, there is attached hereto, as appendix A, a biographical sketch.

During the last few months, I have received many letters asking my views regarding the current movement to eliminate the so-called Connally reservation, attached to the declaration by the United States (S. Res. 196, Aug. 2, 1946), limiting the U.S. acceptance of the compulsory jurisdiction of the International Court of Justice (commonly referred to as the "World Court"). Many of these letters, as well as public statements made by members of the American Bar Association, even in the higher echelons, have exhibited such lack of understanding of the situation—particularly of the historical background—that about a week ago, upon my own initiative and at my own expense, I decided to prepare, print, and distribute a pamphlet on the subject, summarizing some

of the facts and events that, in my opinion, are significant in any consideration or assessment of the present campaign to modify or eliminate the reservation. Because of the amount of research that has been required in its preparation, the pamphlet will not be completed and ready for distribution until about February 5. Therefore, in order to meet the unexpectedly early date of the hearings of the Senate Foreign Relations Committee, I have prepared somewhat hurriedly this statement of views for submission to the members of the committee on the date now set.

It seemed particularly incumbent on me to speak up, because in 1947, during the "honeymoon days" of the United Nations and its agencies, I, as a member of the American Bar Association's special committee for peace and law through United Nations, the great majority of whose members are now deceased, voted in favor of a recommendation to the U.S. Senate for the withdrawal of the Connally reservation—a recommendation that has been frequently referred to by proponents of withdrawal in recent discussions. But, immediately after 1947, proposals and events affecting the domestic affairs of the United States and violative of the provisions and intentions of the Charter of the United Nations, as to noninterference in domestic affairs, changed my views and those of many others with respect to the withdrawal of the Connally reservation. These events put any withdrawal proposal into a deep sleep, from which it was not aroused until 1958 by a group of enthusiasts in the American Bar Association for world peace through law, who were apparently willing at this point of world history to subject the United States to risks that the Connally reservation protects us against—risks which, in my opinion, should not now be taken.

Respectfully submitted.

FRANK E. HOLMAN.

SEATTLE, WASH., *January 25, 1960.*

PART I. THE CHARTER OF THE UNITED NATIONS

The United Nations Charter was promulgated and signed in San Francisco, June 26, 1945. During the deliberations with respect thereto, it was for a time doubtful whether any agreement could be reached on the establishment of a World Court. Certainly none would have been reached creating a World Court with compulsory jurisdiction over the member states represented at that Conference, as will appear from a reading of State Department Publication 2355—Conference Series 72—being a letter of June 26, 1945, to the President of the United States from Mr. Edward R. Stettinius, Jr., the then Secretary of State.

But, in order to have a World Court at all, an ingenious and somewhat subtle compromise was arrived at, whereby, under chapter XIV of the charter, an "International Court of Justice" was established as a principal organ of the United Nations, to function only in accordance with a so-called "statute" annexed to the charter and made a part thereof. Though all members of the United Nations are declared to be "ipso facto, parties to the 'statute'" and may therefore voluntarily resort to the Court for the settlement of any particular international dispute, no nation is subject to the general compulsory jurisdiction of the Court except to the extent that it may so agree in a formal "declaration" deposited with the Secretary-General of the United Nations. In other words, without such affirmative action by way of depositing such a declaration, the Court has no jurisdiction over the member states except as to international disputes where nations voluntarily submitted or referred a particular matter to it. A declaration according general and compulsory jurisdiction to the Court is effective only in accordance with its terms which each nation sees fit to specify in the "declaration" (Court statute, ch. II, art. 36(5)).

The Court is authorized to issue advisory opinions under certain situations specified in the charter, but these have no binding force or effect even upon the particular nations involved in the matter. However, in February of 1946, by indirection, the General Assembly attempted to give advisory opinions of binding force. This was the first effort to circumvent the charter with respect to noninterference in the domestic affairs of the member states, and will be referred to later in connection with other events and efforts in and out of the United Nations, to bring our domestic affairs within the orbit of international determination.

In submitting the charter for approval and ratification, the then Secretary of State and Chairman of the U.S. delegation to the United Nations Conference at San Francisco, Mr. Edward R. Stettinius, Jr., in his formal letter to the President of the United States, dated June 26, 1945, explaining the charter and its

intendments—which letter was published and widely circulated—stated and represented that, under the charter (which included the World Court as one of the principal organs of the United Nations), “the sovereign equality of the member states is declared to be the foundation of their association with each other.” This clearly indicated that no state, by its approval of the charter would, *ipso facto*, give up or forfeit its sovereignty so far as the various agencies of the United Nations were concerned; unless, of course, as provided in the charter, a state voluntarily elected so to do. This was why the right of veto was preserved with respect to the Security Council, the chief enforcement agency of the United Nations. Unless this power of veto is voluntarily waived, no state is to be bound by decisions of the Security Council.

Mr. Stettinius said, *inter alia*, in this connection: “The Security Council is not the enforcement agency of a world state, since world opinion will not accept the surrender of sovereignty which the establishment of a world state would demand. The Security Council, therefore, depends upon the sovereign member states (of the Council) for the weapons both of persuasion and of force * * * (but) they shall exercise their power only in agreement with each other and not in disagreement.” In other words, any one member of the Council, in disagreement, may exercise a veto power. The Security Council’s power of compulsion as against a member state is controlled by this right of veto, in order to preserve the principle of sovereignty; and, on the same theory, a member state was accorded the clear right to limit and control the compulsory jurisdiction of the World Court by the nature and character of the declaration it chose to file with the Secretary General.

The United Nations Charter is a multipartite treaty and, as such, under our form of government, was required to be submitted to the President and to the Senate for approval and ratification. The prompt consent of the U.S. Senate was obtained July 28, 1945. This consent was based largely upon the representations made by Mr. Stettinius and the State Department, that it in no sense constituted a form of world government and that neither the Senate nor the American people need be concerned that the United Nations or any of its agencies would interfere with the sovereignty of the United States or with the domestic affairs of the American people.

The ardent internationalists and the world-government enthusiasts were disappointed with the charter. They had tried at San Francisco to have the Conference of Nations set up a world government. After the charter was promulgated, and after its adoption, they proceeded and have since and are still proceeding, by a variety of devious maneuvers and clever resorts to semantics, to transform the United Nations into a world government or to give it many of the incidents thereof. A number of these maneuvers will be specified later, but it may be stated here in passing that the present effort to modify or eliminate the Connally reservation is one of them.

In addition to specific negations in the charter, that there was no intention of establishing a world government or any of the incidents thereof, as shown by the veto provisions with respect to the Security Council and the provisions according each nation the right to file an acceptance (under such terms as it saw fit) of the compulsory jurisdiction of the World Court, there were other specific negations like that found in article 2, subparagraph 7, which reads as follows:

“Nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present charter.”

Moreover, in describing the general nature of the charter and its intendments, Mr. Stettinius further assured the Senate and the American people as follows:

“The charter commits the United Nations to the maintenance of ‘international peace and security,’ to the development of ‘friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples,’ and to the achievement of ‘international cooperation in solving international problems,’ * * *

“Further, in its capacity as a declaration, the charter states the principles which its members accept as binding. ‘Sovereign equality’ of the member states is declared to be the foundation of their association with each other. Fulfillment in good faith of the obligations of the member states is pledged ‘in order to ensure to all of them the rights and the benefits resulting from membership’ in the organization. Members are to ‘settle their international disputes by peace-

ful means' and in such manner as not to endanger international peace and security, and justice. Members are to 'refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.' At the same time members bind themselves to give the organization 'every assistance in any action it takes' in accordance with the charter, and to 'refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.' "

In addition to pointing out that the Security Council was not to be "the enforcement agency of a world state since world opinion will not accept the surrender of sovereignty which the establishment of a world state would demand," Mr. Stettinius closed the door as to certain other principal organs of the United Nations being instrumentalities of a world state as follows:

"A similarly realistic acceptance of the facts of the actual world limits the General Assembly to discussion and deliberation without the power to legislate, since the power to legislate would necessarily encroach upon the sovereign independence of the member states. So too, the Economic and Social Council has no power or right to interfere with the domestic affairs of the states composing the United Nations. *And for the same reason the jurisdiction of the Court is limited.*" [Emphases supplied]

With all the foregoing representations and assurances, both in the charter itself and on the part of the Secretary of State, who was also Chairman of the U.S. delegation at San Francisco, and on the part of other high government officials who participated in the United Nations Conference there, the Senate and most of the American press and a very large part of the citizenry, including the American Bar Association, joined in proclaiming that the structure of an international organization had at last been devised under which all nations, great and small, would be able to maintain international peace and security. It was broadly asserted that henceforth all nations through the agencies of the United Nations would discuss and determine their controversies peaceably and live in a friendly relationship but under the principle of the self-determination of peoples as to their sovereignty and as to their domestic affairs. So universal was the acclaim of the charter that it was ratified by the U.S. Senate almost without debate and with only two dissenting votes and very soon thereafter ratified by more than 50 other nations.

The years 1946 and 1947 became the "honeymoon period of the charter."

The writer, as a member of the American Bar Association's Peace and Law Committee and otherwise in public and private utterances, was as enthusiastic for the charter as were any of its most enthusiastic supporters; and continued so to be until the world government advocates (by whatever name called) both in and out of the U.N., began to try to circumvent or alter its intentions so as to deny to the United States the right to rely on its provisions and its principles with respect to the protection of our constitutional rights and liberties and the control of our domestic affairs.

The charter itself (ch. XVIII) contains specific provisions for its amendment, but as with many of our liberal friends who, without resorting to the slower but more valid and more honest process of amendment, have sought and unfortunately succeeded in changing our Federal Constitution with respect to many State and individual rights through executive, legislative and judicial pronouncements, the internationalists also eschew the amendment process with respect to the United Nations Charter. It should be pointed out that changes in our Federal Government have often been wrought by beguiling the American people with phrases and slogans—the New Deal, the Fair Deal, the General Welfare, Civil Rights, Social Security, etc., etc. So, in the international field, we are beguiled with such phrases as World Peace, World Order, Human Rights, and World Peace under Law (whose law?). The world government advocates, while relying on all the above self-serving and argumentative phrases, have recently adopted the technique of avoiding the actual phrase or label of world government by speaking of world order or world law. Witness the recent book by Mr. Moses Moskowitz entitled "Human Rights and World Order." In my review of which (American Bar Association Journal of August 1959) I pointed out: "Though it is carefully disguised and the phrase as such is never used in the book, lurking in the background of this, as of all other crusades for a worldwide code of human rights enforceable by a supranational authority, is the old bogey of world government. This is the world order sought to be established."

Even among those who worked hard for the Bricker amendment are some who do not seem to recognize that in voicing and supporting some of the slogans above mentioned, they are actually being beguiled into supporting the world government movement in this country. In saying this and in making the observations in the preceding paragraph regarding phrases and slogans, I do not wish to be offensively critical; but in all earnestness, I deem it important to try to stimulate some of my old friends to do a little thinking on their own account and take stock of the situation as to which side of this great issue now involved in the confusion of slogans and phrases they are really on—the issue as between world government, on the one hand, and the independence and integrity of the United States and the rights and liberties of its citizens on the other.

As already pointed out, the United States was one of the first nations to ratify the charter. The advice and consent of the Senate was given on July 28, 1945, only two negative votes being recorded. As of October 26, 1945, the then American Secretary of State (Mr. Byrnes) proclaimed that the necessary ratifications and deposits had been completed, so that the charter had become "a part of the law of nations."

PART II. THE WORLD COURT

The World Court is now composed of 15 members or judges, of which one is a citizen of the United States, one of Great Britain, and one of Australia, and the others are citizens of the United Arab Republic, Nationalist China, Greece, Poland, France, Mexico, Panama, Argentina, Uruguay, Norway, Pakistan, and Soviet Russia. Only three judges are from common law countries, four are Latin Americans, two are from Moslem countries, two are Communist, one Chinese, and one each from Greece, France, and Norway.

It is interesting to note at this point that the United Nations Commission on Human Rights (consisting of 18 members) also had one member from the United States, one from Australia, and one from Great Britain, and that the others were from countries each having a different historical and legal background, which in no way fits them to understand and appreciate what, by the United States and its citizens, has been traditionally and without question considered a domestic matter instead of a matter of international concern, like our American rights as fixed by our own Constitution and Bill of Rights. The other 15 members of the Human Rights Commission came from the following countries:

- Belgium.
- Byelorussian Soviet Socialist Republic.
- Chile.
- China.
- Egypt.
- France.
- India.
- Iran.
- Lebanon.
- Panama.
- Philippine Republic.
- Ukrainian Soviet Socialist Republic.
- Union of Soviet Socialist Republics.
- Uruguay.
- Yugoslavia.

As a consequence, as will be pointed out later, the Human Rights Commission had no hesitation in making pronouncements and drawing covenants and pacts, modifying and distorting many of our American rights and liberties as fixed and guaranteed by our own Constitution and Bill of Rights. More of this later.

The World Court is in no way bound or guided by any definite rules or system of law such as the common law or the American system of constitutional law. It is entirely free to make up its own rules and render any judgment its members can agree on, as influenced by each judge's own particular legal concepts, and one may add as influenced by his national pride or interest—and there is no appeal.

It is said by those who favor the modification or withdrawal of the Connally reservation (report ABA section of International and Comparative Law, Aug. 1950, page 51 et seq.) that the Court's "compulsory" jurisdiction is, in any

event, greatly limited (court statute art. 36(2)) by being confined to the following orbit:

1. The consideration of only legal disputes;
2. Interpretation of a treaty;
3. Any question of international law;
4. The existence of any fact which, if established, would constitute a breach of an international obligation;
5. The nature or extent of reparation to be made for the breach of an international obligation.

By what system of law would the members of the World Court decide what is and what is not a legal dispute? There is presently no accepted definition or principle of international law which determines that question. Therefore, in making up his mind, each member of the Court would have to resort to his own particular system of law as to what is a "legal dispute."

Suppose we decided to discontinue foreign aid to some Communist or neutralist nation now receiving it, and that nation sued us in the World Court because we were hurting its economy. Who is to say that the Court would not rule that this constituted an international legal dispute, though we would consider it essentially a matter of our own business, to what nation and when we will give foreign aid. Except for the Connally reservation, the World Court could decide otherwise and we would have no appeal.

Under the terms of the Charter, we pledge ourselves to promote full employment and social and economic progress for all peoples. Who is to say that the World Court would not consider this an international legal dispute and render judgment against us accordingly if some other nation made a showing that we have not lived up to the pledge of the Charter by not furnishing such aid to promote full employment and social and economic progress in a particular nation? Again, the question of when, to whom, and to what extent we furnish foreign aid is a matter of our own business. Except for the Connally reservation, we could not determine that matter for ourselves.

When it comes to the "interpretation of a treaty" it only becomes necessary to incorporate in treaty form any matter involving our domestic affairs for the World Court to obtain jurisdiction over such matter. As will appear later, the internationalists have sought and still propose to seek by various treaties, covenants, and pacts, to bring many of our domestic affairs into the orbit of international definition and determination.

As to the World Court's jurisdiction over "any question of international law," that too involves a wide field of speculation and definition and, under our State Department's official declaration of 1950 that there is no longer "any real difference between domestic and foreign affairs" (State Department Publication 3972, Foreign Affairs Policy Series 26, released September 1950), the World Court could hold that many, if not all, of our domestic matters have become so much matters of international concern that they may be properly considered as being subject to international law—that is, it could so hold, except for the protection of the Connally reservation.

It should be kept in mind that international law or the law of nations is not enacted, but is made up of the general rules and principles of law customarily recognized by civilized nations, supplemented, from time to time, by formal conventions, pacts, and treaties and by declarations and pronouncements of governments and the judicial decisions of the courts of civilized nations, and even by the pronouncements of so-called international jurists and text writers. In fact, article 38 (1d) of the statute specifically provides that the World Court may look to the teachings of the most highly qualified publicists of the various nations, for the determination of international law. Therefore, the World Court has a very wide (not limited) power of determining what is a question of international law, and its determinations may be based on the teachings of internationally biased publicists.

As to the other categories of the jurisdiction of the World Court dealing with the "breach of an international obligation" and the "nature and extent of the reparation to be made for the breach of an international obligation," there also arises the question, "What is an international obligation?" If all the vague and general humanitarian promises made in the United Nations Charter, as for example to promote full employment and social and economic progress for all peoples of the world, are such international obligations and a nation complains to the World Court that we have not lived up to the obligations by our failure to give adequate aid and assistance in reviving the economy of that country and

enabling it to achieve full employment and social and economic progress, the World Court could hold us liable for the breach of such an international "obligation" and award reparations therefor. The Connally reservation saves us from that predicament.

Though some members of the World Court, in rare instances, might act capriciously or in a spirit of prejudice toward one of the litigants, for example the United States, we must confess that caprice and prejudice could occur and has occurred, not only on the part of some judges of our own courts, but in the deliberations of any body of human beings sitting in judgment upon any matter. But no argument is intended here on that score. It is not suggested that any member of the World Court will act willfully in disregard of his solemn declaration (statute article 20) "that he will exercise his powers impartially and conscientiously." But he can and will necessarily act in the light of his personal views and experiences and, as previously pointed out, the majority of the members come from countries where there is no knowledge or appreciation of our form of government or what matters Americans have traditionally believed were within their own domestic jurisdiction.

What reason is there to suppose that a majority of the World Court will approach or view these matters any differently than the U.N. Commission on Human Rights? The members of that Commission have, for the most part, been able and distinguished citizens of the countries from which they were selected; quite a number were able lawyers in their own countries, as for example, Mr. Rene Cassin of France, Dr. Charles Malik of Lebanon, and the Honorable Carlos Romulo of the Philippine Republic. But, in their deliberations as members of the Commission on Human Rights, they reflected their own views, based upon their own historical and legal backgrounds and, in spite of the prohibitions in the Charter (like those in article 2, subpar. 7) against the United Nations intervening "in matters which are essentially within the domestic jurisdiction" of any member state, they formulated convention after convention containing proposals that affected or intervened in matters which Americans have always treated as "essentially within the domestic jurisdiction" of the United States. The World Court, man for man and in the aggregate, represents no greater ability or personal integrity than did the U.N. Commission on Human Rights.

The difficulty we are talking about is inherent in both instances. Citizens or nationals of Pakistan, Egypt, Greece, Lebanon, and other countries like Poland, the Scandinavian countries, the South American countries, and the Soviet Union, and even France, are grounded in systems of law which in no way fit them to understand what, to us, is essentially a domestic matter.

Among the many strange and unbelievable results of the deliberations of the Commission on Human Rights, was that, after 400 meetings, a majority refused to include in the Covenant on Human Rights any provision recognizing or guaranteeing the basic American right to own private property and be secure in its enjoyment as against its arbitrary seizure by government. The reason, of course, is that in most of the countries from which the members of the Commission came, the government is free to expropriate private property when and as it sees fit and to provide such compensation, or none, as it sees fit. Under our concept of freedom, no man can truly be free who lacks the right to own property and to be secure in its enjoyment. It can be taken or damaged, even for public use, only by what we call "due process."

As Senator Borah once said (and he was not by any means classed as a conservative):

"* * * what are these property rights which are guaranteed and made safe by the Constitution? What an inseparable part are they of human rights? Is not the right to acquire, own and enjoy property a part of human rights? Is there any such thing as personal liberty without it? There is a very large portion of the human family at this time who will tell you that liberty, family happiness and contentment were all lost in the self-same hour that they lost the right to acquire property and to be secure in its enjoyment. The framers were wise enough to know and brave enough to declare that when you have made property rights secure, you have contributed incalculably to human rights and to human liberty."

In connection with many other American concepts like freedom of speech and freedom of press, a majority of the members of the Commission on Human Rights, in formulating the provisions of the covenant and of the convention on "Freedom of Information" and provisions of other conventions, so little understood our concepts that these precious American rights were changed (and to us

distorted) and were rewritten in order to conform them to a kind of common denominator agreeable to the concepts in the systems of law of other countries. The deliberations of the U.N. Commission on Human Rights reveal the inherent difficulty and danger of according to any international commission or court the power to determine what matters are essentially within the domestic jurisdiction of the United States.

World peace would be purchased at a high price, so far as the United States is concerned, if it resulted in submitting the determination of the nature and character of our American rights and liberties to a world tribunal. It would not be a livable peace for the American people. As a matter of fact, as will be shown later, the cause of world peace will not, in any sense, be advanced by withdrawing the Connally reservation, any more than it would be advanced by Australia and several other countries giving up the particular reservations made in their declarations in accepting the compulsory jurisdiction of the World Court.

We seem always to have in this country a considerable number of ordinarily patriotic citizens who, under the influence of some noble catchphrase or slogan, join with others who believe that patriotism is an old-fashioned and narrow-minded concept and who have convinced themselves that the only way to attain world peace is to give America away—to give America away, not only in the form of money and material resources, but also in the form of giving up and surrendering our sovereignty and our previous American rights and liberties, as fixed and guaranteed by our Constitution and our Bill of Rights, and heretofore regarded as inalienable.

A considerable legal argument can be made that the Senate has no power under the Constitution to relinquish the Connally reservation, and that it never did have the power to submit to the jurisdiction of an international court matters which, under our Constitution and laws, are essentially within the jurisdiction of the United States or of the several sovereign States thereof. It makes no sense to say that we do not do this by merely permitting an international court to decide what are and what are not domestic matters instead of deciding this question for ourselves as the Connally reservation provides. Because in giving the court jurisdiction to decide the question, we do permit the sovereignty of the United States over its own affairs to be substantially impaired by submitting such matters to an international court. To reason otherwise is to indulge in naive circumlocution.

It is not denied that, under the Constitution, the Federal Government may voluntarily submit truly international questions to an international tribunal, on a case-by-case basis. It has been done this way over and over again. But the Constitution does not anywhere contemplate an unqualified blanket advance relinquishment of sovereignty to an international tribunal to determine what, from our point of view and under our Constitution and laws, may be domestic questions. It is doubtful whether such an absolute blanket submission to compulsory jurisdiction of the World Court can be authorized other than by constitutional amendment approved by three-fourths of the States, as provided in article V, rather than by Senate action alone. Let anyone point to any indication that the Founding Fathers contemplated an unqualified blanket release of power of the kind that would occur with the withdrawal of the Connally reservation.

PART III. THE CONNALLY RESERVATION

Although the charter was promptly ratified, almost by unanimous vote in the Senate, delay occurred in taking action with respect to adopting and filing the U.S. declaration accepting compulsory jurisdiction of the World Court, as provided by article 36 of the statute. Senator Morse, in November 1945, made an effort to secure the passage of a form of declaration (S. Res. 160) in connection with the United Nations Participation Act, but the sponsors of that act were not willing to include in it an authorization for a declaration as to the jurisdiction of the World Court over the United States. Senator Morse, therefore, introduced Senate Resolution 196, which was received and referred to the Committee on Foreign Relations. The matter then stood in abeyance until the favorable report of the Foreign Relations Committee, July 25, 1946, when Senator Morse's resolution (S. 196) for unconditional acceptance by the United States of the compulsory jurisdiction of the International Court of Justice was reported to the Senate. In view of the Senate's practically unanimous approval of the charter the previous year, why was a declaration under article 36 of the statute not immediately passed—even without debate and certainly without amendment?

Because, unlike the peace and law committee of the ABA, of which the writer was a member during the years 1945, 1946, and 1947, and upon whose recommendation the house of delegates relied in this matter—and unlike many other organizations and individuals then still experiencing the enthusiasm of the "honeymoon period" of the United Nations—there were a number of Senators who had begun to suspect that certain internationalists, both in and out of the United Nations, were laying plans to have the U.N. exercise the powers of a world state and to transform various of its agencies into instrumentalities of a world government, to such an extent as would seriously invade our exclusive jurisdiction over our domestic affairs.

Fears along these lines were justified on account of several specific developments in the United Nations itself. These were augmented by the fact that the great majority of members of the World Court were from countries whose historical and legal backgrounds were such that they could not have any knowledge or appreciation of the American form of government and what to us is essentially within the jurisdiction of the United States or the several sovereign states thereof. Such fears were sufficient to influence many Senators who were recognized to be definitely international in their views, such as Senators Vandenberg and Austin, to vote for the Connally reservation, even though, as members of the Foreign Relations Committee, they had joined in the report of that committee of July 25, 1946, favoring the Morse resolution (S. 190), involving an unconditional compulsory jurisdiction over the United States of the World Court.

Some will say that the withdrawal of the Connally reservation, to wit the mere elimination of the language, "as determined by the United States," will still leave the American Declaration of Acceptance with a limitation as to "disputes with regard to matters which are essentially within the jurisdiction of the United States" and that, therefore, our acceptance of jurisdiction will still exempt our domestic affairs and be a conditional, rather than an unconditional, acceptance. However, this offers no assurance of protection to the United States, as to interference in its domestic affairs, because the determination of what matters are domestic and what international would then be subject to the sole jurisdiction of the World Court, the majority of the members of which, by reason of their legal and historical backgrounds, can not be expected to take any different view of this issue than did the United Nations Commission on Human Rights. We know from experience that the Commission on Human Rights, though an equally able body of men, exhibited no knowledge or appreciation of the difference, from the American point of view, between an international and a domestic matter, and had no hesitation, in the various covenants and pacts that that Commission formulated, in treating our domestic rights and liberties as being within the orbit of international concern and determination.

As of August 3, 1946, by a substantial majority (50 to 12), the Senate voted to write into the Morse resolution the reservation or condition introduced by Senator Connally, which provided that this country's acceptance of the jurisdiction of the World Court "shall not apply to disputes with regard to matters which are essentially within the jurisdiction of the United States, *as determined by the United States.*"

The present controversy with respect to the modification or elimination of the Connally reservation concerns only the question of the retention or elimination of the last six words above italicized. This was the language introduced by Senator Connally as an amendment to the Morse resolution, but relates to and modifies only the preceding language as above quoted with respect to matters essentially within the jurisdiction of the United States.

For a period following the adoption of the reservation (Aug. 3, 1946) and until the latter part of 1948, a number of disappointed internationalists and several organizations, including notably the American Bar Association, criticized and continued to criticize the actions of the Senate and to call for the withdrawal of the reservation. However, further attempts, in and out of the United Nations, in the latter part of 1948 and in subsequent years, to extend its power to include the right to interfere in our domestic affairs, quieted and supposedly ended the criticisms of the Connally reservation so far as the American Bar Association was concerned. As a matter of fact, the resolution of the house of delegates of 1947 recommending its withdrawal was never officially communicated to the Senate or any of its committees by the association or by any committee thereof. (See Peace and Law Committee Report, September 1947, p. 22; and report of February 1948, p. 21.)

It became definitely evident, at its meeting in Paris in the fall and winter of 1948, that the General Assembly of the United Nations was formulating a so-

called Declaration of Human Rights (to be followed by a covenant) and a Genocide Convention and other conventions, through which instrumentalities, when ratified as treaties, the United Nations intended to interfere in our domestic affairs to the extent of defining, determining, and changing the rights of American citizens as guaranteed by our own Constitution and Bill of Rights. Thereafter, nothing further was heard, even in American bar circles, about pressing for the withdrawal of the Connally reservation. For 10 years the matter remained dormant and largely forgotten, until resurrected by some of the internationally minded members of the association at its meeting in Los Angeles in 1953, and more recently resurrected by Senator Humphrey (S. Res. 94, Congressional Record, pp. 4510-4513).

PART IV. EVENTS CONNECTED WITH THE UNITED NATIONS JUSTIFYING THE CONNALLY RESERVATION

These events should be set forth in two categories: those that occurred prior to the adoption of the Connally reservation (Aug. 3, 1946) and those that have occurred since.

The first move to circumvent the protective provisions of the charter and the assurances given by the State Department with respect to our domestic affairs at the time of the charter's adoption began to develop in February 1946. This move involved an attempt on the part of the General Assembly, by and through advisory opinions, to give the World Court jurisdiction over matters within the domestic jurisdiction of the United States. On February 13, 1946, the General Assembly approved a Convention on Privileges and Immunities of the United Nations, to be followed by another entitled "the Convention of Privileges and Immunities of Specialized Agencies," providing that in case of a difference between the United Nations or one of its specialized agencies on one hand and a member state on the other, a request might be made by the U.N. or one of its specialized agencies for an advisory opinion of the International Court of Justice. In these conventions was included a revolutionary provision that "the opinion (advisory opinion) given by the Court shall be accepted as decisive by the parties." This provision would have given the advisory opinions the same binding character as that possessed by the "judgments" of the World Court in cases properly and formally submitted to it within its regular jurisdiction.

The far-reaching significance of the two proposed conventions above mentioned may be illustrated as follows: Suppose a dispute developed between the United States and the United Nations or one of its specialized agencies in a matter involving the validity of a refusal of the United States to comply with some so-called human right set forth in the declaration and/or in the covenant on human rights which, as the United States believed, violated American individual rights as fixed by our Constitution and Bill of Rights. Then, through the back door of an advisory opinion by the World Court, which as above indicated, must be accepted as "decisive," our domestic rights could be controlled and determined by the World Court. This kind of procedure would also have circumvented the statute of the Court that only states may be parties in cases before it—not the United Nations as such, or any of its specialized agencies, all or any of which may be authorized, under article 96 of the charter, to request advisory opinions. What an ingenious way this would have been to interfere in and determine all manner of domestic matters in violation of article 2, subparagraph 7 of the charter, as well as in violation of the statute of the Court as above indicated.

The second event or move in 1946 (prior to the passage of the Connally reservation) to deal with matters essentially within the jurisdiction of the United States was the appointment of a Human Rights Commission as a subagency of the Economic and Social Council. This Commission was authorized to propose declarations, covenants, and pacts, covering every facet of our domestic affairs.

The significance of the foregoing events or developments in the United Nations in 1946 was not generally recognized at the time by many Americans, including the members of the ABA Peace and Law Committee. It was not until the February 1948 report of this committee that these developments in the United Nations in 1946 were called to the attention of the house of delegates. Therefore, the House did not have the opportunity of considering their significance when it acted on the Connally reservation in February 1947, but the Senate may well have known of these events when it adopted the Connally reservation in August 1946. It should be noted in passing that the vote in the ABA House of Delegates to withdraw that reservation was 85 to 45—only a total vote of 130 members out of a normal house membership of 248.

Whether a knowledge and a consideration of the above significant events of 1946 involving the bold attempt to extend the power of the United Nations and its agencies over our domestic affairs would have substantially altered the vote of the house cannot now be determined. Certainly, however, there were many members of the house of delegates, the writer among them, who, by the latter part of 1948, after realizing the significance of these attempts to extend the jurisdiction of the United Nations over our domestic affairs and similar further attempts, came to take a different view with respect to the withdrawal of the Connally reservation. We realized the far-reaching significance of the creation of the Human Rights Commission and the nature and character of the conventions and pacts being formulated by it, and realized the widespread encroachments upon American rights and liberties that would result when these conventions and pacts were approved as treaties and, under our Constitution, then became a part of the law of the land, outranking the provisions of our Federal and State constitutions and our Federal and State laws and established court decisions thereunder.

It should be kept in mind that the World Court is specifically given jurisdiction over all disputes concerning the interpretation of treaties. These conventions and pacts formulated by the Human Rights Commission and later by other agencies of the United Nations, to be ratified as treaties, contained provisions inconsistent with many of our fundamental rights as guaranteed by our Constitution and laws. Thus, a way was being devised whereby all our domestic affairs might eventually come under the jurisdiction of the World Court. The World Court would have been left with no alternative but to so decide and, without the Connally reservation, there would be no way to prevent it, except by the adoption of an appropriate amendment to our Constitution, in the nature of the Bricker amendment.

In the latter part of 1948, after the Genocide Convention was passed at a meeting of the General Assembly in Paris (which convention, among other things, would have authorized the transportation of Americans overseas for trial in a foreign court for local offenses committed in this country), and when a draft covenant on human rights was presented, the ABA Peace and Law Committee never again, in any of its reports or recommendations to the house of delegates, during the next decade, referred to the Connally reservation. It became a dead issue. Instead, the peace and law committee and the house devoted themselves to the study and consideration of ways and means to protect American rights against "treaty law"; and we entered upon the long fight for a constitutional amendment to accomplish that objective.

Now, what are some of the other events since August 3, 1946, the date of the passage of the Connally reservation, which justify the retention of that reservation? We have mentioned the Genocide Convention adopted by the General Assembly in December 1948; also, at that time the proposed Covenant on Human Rights. Both of these were defeated largely by the efforts of the American Bar Association. The type of internationalist who opposed these efforts of the ABA and who favored the multiple treaty program of the Human Rights Commission and of other U.N. agencies are now in the forefront of the movement to change the Connally reservation. They seem to believe somehow that any effectual effort to protect our American rights (state and individual), as guaranteed by our Constitution and Bill of Rights, is a deterrent to world peace. On some ground of world peace, world law or world order, they have induced to join them a considerable number in the ABA who fought for the Bricker amendment and against the invasion of our domestic rights by the programs of the United Nations which, among other things, were violative of the provisions and intendments of the Charter.

Of the significant events connected with the United Nations, which occurred during and subsequent to 1948, justifying the protection of the Connally reservation as against internationalist thinking and programs, tending more and more to give the United Nations and its various agencies control and supervision over our domestic affairs, the following may be mentioned:

(1) Mr. John P. Humphrey, the first Director of the Commission on Human Rights, in an article in the January 1948 issue of "The Annals of the American Academy of Political and Social Science," publicly disclosed that what the Commission on Human Rights was proposing in its various so-called bills of rights programs constituted intervention in matters within the domestic jurisdiction of the member States. He exposed the whole revolutionary nature of these programs by boldly stating:

"What the United Nations is trying to do is revolutionary in character. Human rights are largely a matter of relationships between the state and individuals, and therefore a matter which has been traditionally regarded as being within the domestic jurisdiction of states. What is now being proposed is, in effect, the creation of some kind of supernational supervision of this relationship between the state and its citizens."

It is obvious that the Connally reservation is necessary to protect the United States against such a program of supernational supervision of its citizens in relation to their own country:

(2) In April 1949, Mr. Moses Moskowitz of the United Nations staff, publicly stated (35 ABAJ 285) that under the official view of the United Nations, any matter once becoming the subject of a U.N. convention or even of a resolution of one of its agencies, ceased to be "a matter essentially within the jurisdiction of a member state." In other words, the U.N. (or any of its agencies), by its own ipse dixit, so to speak, may internationalize a purely domestic matter so that it loses its character as a domestic matter and loses the benefit of the protection and immunities set up in the charter with respect to such matters. Upon this theory, the U.N., by its own bootstraps, could lift itself into a world government. Mr. Moskowitz put the matter as follows:

"* * * once a matter has become, in one way or another, the subject of regulation by the United Nations, be it by resolution of the General Assembly or by convention between member states at the instance of the United Nations that subject ceases to be a matter being 'essentially within the domestic jurisdiction of the member states.' As a matter of fact, such a position represents the official view of the United Nations, as well as of the member states that have voted in favor of the Universal Declaration of Human Rights. Hence, neither the declaration, nor the projected covenant, nor any agreement that may be reached in the future on the machinery of implementation of human rights, can in any way be considered as violative of the letter or spirit of article 2 of the charter."

It is obvious that the Connally reservation is necessary to protect the domestic affairs of the United States against this broad theory that the U.N., by its own dictum, can transform and internationalize all our domestic affairs to bring them under its jurisdiction.

(3) In September 1950, the internationalists in the U.N. succeeded in getting the famous (or infamous) official pronouncement from the Acheson State Department (State Department Publication 3972) that "there is now no longer any real difference between domestic and foreign affairs." On the basis of such a pronouncement by our own State Department, with nothing in the nature of the Connally reservation to negative it, the World Court would have little hesitation in holding that the United States no longer considers itself as having any domestic affairs over which to preserve its own jurisdiction. It would seem clear that we need the Connally reservation to stand as a notice to the World Court and to all the world that we will not permit any compulsory outside interference in our domestic affairs.

Many other instances could be cited where the internationalists, in and out of the United Nations, have attempted to establish a supernational supervision over matters "essentially within the domestic jurisdiction" of the United States. The Commission on Human Rights is not the only U.N. agency that, in the years following 1948, was engaged in spawning treaties designed to control and supervise many of our essentially domestic concerns. Among these agencies are the ILO, UNESCO, GATT, ITU, FAO and many others. It would take a volume, or several, to list all the agencies and all the matters involving our domestic affairs, which the various agencies of the U.N., from 1948 to the present, have proposed to incorporate in some form of treaty and which, as treaty law, would come within the jurisdiction of the World Court, regardless of their domestic character—unless we are protected by the Connally reservation.

For purposes of illustration, these include, among others, the kind of teaching and textbooks to be adopted in our public school system; matters of social legislation; matters of economic legislation; matters of labor legislation; matters of health and socialized medicine; and numerous others, including a treaty to establish an international criminal court to try Americans in a court made up, to a large extent, if not entirely, of foreigners, a plan under which, as in the case of the Genocide Convention, American citizens could be transported overseas for trial and would be deprived of the constitutional safeguards accorded them under the laws of this country.

Without the Connally reservation, the World Court would have the exclusive power to determine which of the foregoing matters, or what part of them, are

subject to the compulsory jurisdiction of that court. It will not do to say that this vast program of "treaty law" has somewhat bogged down and that few of these treaties have proceeded to the point of ratification by the U.S. Senate. This is true for the time being. It is largely due to the vigorous fight made by the American Bar Association and its members and many other patriotic organizations and individuals, including many present Members of the Senate, for a constitutional amendment. An early result of that fight was the defeat of the ratification of the Genocide Convention during the Truman administration and a later result was that of causing the Eisenhower administration, through Mr. Dulles (with the authorization of the President) to promise the Judiciary Committee of the U.S. Senate that the Eisenhower administration did not intend to become a party to Covenants on Human Rights or other treaty proposals affecting our domestic affairs, or to press for the ratification of the Genocide Convention. This promise, though in the nature of a victory at the time, cut the ground from under the movement to pass the Bricker amendment. The result is that the American people have no constitutional amendment to protect them against treaty law founded on U.N. proposals interfering with their domestic affairs.

With the coming of a new administration, the ardent internationalists will be free to revive the U.N. treaty program and, by and through this process, give the World Court compulsory jurisdiction over many matters otherwise essentially within the domestic jurisdiction of the United States. The only deterrent to this is the Connally reservation, under which the United States reserves the right to itself to determine when a matter, under our form of government, may rightly be said to be within our domestic jurisdiction. It should be pointed out that, even though a treaty like the Genocide Convention has failed of ratification, it does not cease to be pending at the expiration of a particular Congress, as do other forms of proposals or resolutions. The State Department can bring it up on the calendar of the Senate at any succeeding session of the Senate no matter how much time has elapsed meanwhile.

The great oversight on the part of all those who now advocate withdrawing the Connally reservation is that they fail to consider the various programs already advanced by the United Nations and its agencies and the innumerable ones that may probably be advanced in the future. Through the stratagem of treaty law and through other ingenious devices and pronouncements and declaration by government, a large part of our domestic affairs can be characterized as international. When so characterized, they may easily be treated by the World Court as a part of international law and subject to its compulsory jurisdiction. Under a general and unlimited declaration by the United States accepting the jurisdiction of that court, we would not be in any posture to prevent it.

The charter specifically intended and provided that a member state might file a declaration which, by its terms, limited its acceptance; and yet our internationalists assert that it was highly improper on the part of the United States to exercise this right to file a limited declaration and that the doing so endangers the functions of the World Court, and that it somehow endangers world peace.

At least two of the judges of the World Court have had the temerity to say in their opinions in the *Interhandel* case already heard in the Court—Judges Lauterpacht and Spender—that a self-judging reservation like the Connally reservation in a declaration is invalid, as contrary to article 36(6) of the statute, and nullifies the entire declaration even though, under subparagraph 5 of the same article 36, it is specifically stated that all declarations are to be acceptances of the compulsory jurisdiction of the Court "in accordance with their terms." Two other judges, Judges Klaestad and Armand-Ugon, have concluded that such a self-judging reservation is invalid, but that, nonetheless, the rest of the declaration remains in effect, but that the Court could give no effect to the reservation. Judges Hackworth and Wellington Koo, in the *Interhandel* Opinion on Interim Relief, held that such self-judging reservation is valid. The Court itself has not undertaken to decide the question.

PART V. ANALYSIS OF ARGUMENTS AGAINST RETENTION OF THE CONNALLY RESERVATION

In a recent study by a special committee of the American Bar Association Section of International and Comparative Law, eventuating in an 80-page report (dated August 1959) now adopted by the section, the "Arguments" against the retention of the Connally reservation are listed on pages 55, 56, and 57 of the report. The preliminary "Argument" is in the nature of a general statement as follows:

"Many able scholars have severely criticized the reservation ever since it was first under discussion. It is logically offensive to right-thinking lawyers, jurists, philosophers, and statesmen because it violates the age-old precept that no man, no nation, should be the judge in his own case."

If the "able scholars" referred to were listed, it would likely be found that few of them have approached the subject from the point of view of American sovereignty and independence and American rights and liberties; that many of them are in one way or another world government advocates; that most, if not all, have ignored the succession of events connected with the United Nations operations since 1948, which justify the protection of the Connally reservation; and that they still naively entertain the same faith, which the writer and many others entertained prior to 1948 with respect to the U.N. and its agonies abiding by the terms and intentions of the charter, designed to protect the member states (including the United States) from interference in domestic affairs.

The second sentence of the paragraph above quoted is a self-serving statement and a fallacious omnibus observation, and, by the use of the words "right-thinking," it is somewhat arrogant. A list of these "right-thinking" lawyers, jurists, philosophers, and statesmen would also disclose that their thinking is the result of the same approach to the issue as pointed out with regard to the "able scholars." Apart from any such matter of approach, it is fallacious to say that the Connally reservation "violates the age-old precept that no man, no nation, should be the judge in its own case." The age-old precept referred to applies only in cases where the party (whether individual or nation) has submitted himself and his case to the jurisdiction of a court, and then claims the right to be a judge in his own case. A party often has the right to elect (or judge) whether he will submit his case to a particular tribunal. For example, one may take advantage of the fact of diversity of citizenship and, if sued in the State court, may remove his case to a Federal court. Thus, our domestic law gives one the right to be a judge in his own case as to whether he will accept the jurisdiction of a particular court. So the statute of the World Court gives a nation, by the filing of a declaration accepting the jurisdiction of that Court, the right to file an unlimited acceptance or a declaration containing terms of limitation as to whether it will submit to that Court the determination of what is a domestic question.

The United States is not the only nation to exercise the right. Many other nations have done so, and this act is not violative of the "age-old precept" referred to. All talk and so-called argument in this respect is a smokescreen developed to obscure and belound the issues. Any "right-thinking" lawyer ought to recognize it as such. I cannot speak for the so-called "jurists, philosophers, and statesmen." I sometimes wonder whether many of our so-called statesmen ever recognize anything definitely, or for long.

We might as well bring out into the open who is really responsible for the concern and fear on the part of patriotic Americans justifying the passage and the retention of the Connally reservation. The responsibility rests largely upon the "able scholars" and the "right-thinking lawyers, jurists, philosophers, and statesmen" referred to, for it was chiefly these and other ardent internationalists who approved or went along with the various moves and events in the United Nations (beginning as early as 1940) violative of the charter and designed to impair or destroy the sovereignty and independence of the United States and the domestic rights of its citizens. Let those who now want to withdraw the Connally reservation point to one of these "able scholars" who raised his voice against the attempted encroachments on our sovereignty and independence and our domestic affairs or in favor of the Bricker amendment, other than those few of my old friends who supported the Bricker amendment, but are now beguiled into supporting the current movement for the elimination of the Connally reservation by the constant repetition of such phrases as "World order," "World law," and "World peace under law."

It is suggested that by including the Connally reservation in our declaration under article 36(5) of the statute, the United States was guilty of a very unworthy act and one that not only endangers the functioning of the World Court, but even world peace. This suggestion completely overlooks the fact that a number of other nations filed declarations under article 36(5) limiting the terms of their acceptance of the jurisdiction of the World Court. Our American internationalists seem not to consider these other declarations as unworthy or disturbing acts on the part of the nations concerned.

Mexico reserves "disputes arising from matters that, in the opinion of the Mexican Government, are within the jurisdiction of the United States of Mex-

leo"; France reserves "disputes relating to matters which are essentially within the national jurisdiction as understood by the Government of the French Republic," though this reservation was later modified to "disputes relating to questions which, by international law, fall exclusively within the domestic jurisdiction"; Liberia reserves "any dispute which the Republic of Liberia considers essentially within its domestic jurisdiction"; the Union of South Africa reserves "disputes with regard to matters which are essentially within the jurisdiction of the Government of the Union of South Africa as determined by the Government of the Union of South Africa"; Pakistan reserves "disputes with regard to matters that are essentially within the domestic jurisdiction of the Government of Pakistan, as determined by the Government of Pakistan"; Sudan reserves "disputes with regard to matters which are essentially within the domestic jurisdiction of the Republic of Sudan, as determined by the Government of the Republic of Sudan"; India at first accepted without limitation the compulsory jurisdiction of the Court, but later altered its acceptance to give it the right to determine what matters are within domestic jurisdiction. Other nations excluded from their acceptance of the jurisdiction of the World Court a variety of specific matters. This was done notably by the United Arab Republic and by Australia.

The Australian declaration is particularly interesting in that it excepts from the jurisdiction of the Court matters that would seem to be international in their impact upon other nations. For example, it excepts disputes regarding its Continental Shelf and the natural resources thereof and the waters bordering on Australia, unless the parties to the dispute first agree on a *modus vivendi* prior to the Court's decision. This means that Australia will not accept any decision rendered by the World Court on any of the matters excepted unless the parties agree with respect to the terms and conditions under which the decision will operate. This is clearly in the nature of a prior self-judging of the operating effect the decision of the World Court will have, and the Court has no power to render a decision as to the terms and conditions of this *modus vivendi*. Even Judge Lauterpacht has declared in one case:

"In accepting the jurisdiction of the Court, governments are free to limit its jurisdiction in a drastic manner. As a result, there may be little left in the acceptance which is subject to the jurisdiction of the Court" (*Case of Certain Norwegian Loans (France v. Norway)*, (1957 I.C.J. Rep. 9, 46)).

Without too far prolonging the discussion of the nature and character of reservations, it is interesting to note that the United Kingdom's declaration of April 18, 1957, excluded from the World Court's jurisdiction "disputes relating to any question which, in the opinion of the United Kingdom, affects the national security of the United Kingdom or any of its independent territories." It is true that later (Nov. 26, 1958), when Great Britain was particularly trying to placate Communist China and play ball with Communist Russia, and otherwise attempting to convince other parts of the world that all international disputes could be settled by the World Court, its Government modified its declaration limiting its reservation to disputes based on events occurring thereafter, but retaining it as to disputes based on previous events. However, its modification has had no effect upon increasing the business of the World Court or contributing to the cause of peace. Great Britain and the other nations of the non-Communist bloc still resort to the practice of attempting settlements of international disputes at the diplomatic level, through negotiations and conferences, rather than attempting to resort to the World Court—witness Suez.

It is next stated in the "Arguments" in the report of the special committee of the section that the following practical objections to the Connally reservation call for its elimination:

"(a) Because of the reciprocal nature of consent to the Court's jurisdiction, the self-judging domestic jurisdiction reservation enables any other party to a suit brought by the United States to determine that the matter is within its domestic jurisdiction and thereby prevent the United States from utilizing the Court.

"Thus, the United States, which has a larger stake in investments abroad and in military bases abroad than any other nation has prevented itself from utilizing, in its own behalf, the International Court of Justice. This does not seem to make good sense. It is especially damaging to the United States, at least potentially, with respect to countries which take a far more expansive view of their domestic jurisdiction than does the United States."

What is persuasive about this? So far as our stake in investments abroad and in military bases abroad and disputes concerning these matters are concerned, such disputes have always been and still are being settled at the diplomatic level, insofar as a dispute is between two sovereignties. This has been found to be more direct and to take less time and to leave a better feeling for two or more nations to negotiate a settlement than for one or more to force a settlement on another by a Court judgment, which, in this instance, could not be enforced anyhow, as the special committee states later, if any nation involved exercises its right of veto in the Security Council. This argument is but another "smoke screen" and does not stand up under analysis.

"(b) The reservation served as a precedent for six other nations which filed similar reservations thereby crippling the Court and very likely causing other nations not to adhere to the 'optional clause' at all."

First, what is particularly unfortunate about this? What is the objection to other nations wanting to protect their own domestic affairs from international interference as the United States, on its own initiative, decided it wanted to do? Second, however, there is no real proof submitted of this having resulted in "crippling" the Court; or that the reservations, like the Connally reservation, "may render the whole system of compulsory jurisdiction virtually illusory." The only proof offered is the statement by Mr. Becker of the State Department to the following effect:

"There can be little doubt that reservations of this type have tended to minimize the number of disputes determined by the Court, particularly in view of the possibility that a state which does not have such a reservation may, when sued by one which does, invoke the doctrine of 'reciprocity.'"

The difficulty with many statements on the part of State Department personnel is that they are self-serving and often made to support some particular international move or program in which they are interested. But it is not difficult to find that one State Department pronouncement is inconsistent with another. Mr. Becker apparently made his statement in 1958. In 1959, Mr. William B. Macomber, Jr., Assistant Secretary of State, wrote Congressman Boggs of Louisiana a letter in which he exhibited no particular concern about the reservation because he said that it "would not afford a defense having significant value," and that "the United States, as a matter of policy, would expect to invoke the reservation only in those cases in which the Court itself would probably uphold a plea of domestic jurisdiction if interposed by the United States on the basis of the domestic jurisdiction reservation without the automatic proviso."

Mr. Macomber would seem to indicate, though it is a little difficult to tell exactly what he means, that the Connally reservation has been no particular stumbling block to the functioning of the Court and no particular bar to the United States invoking the jurisdiction of the Court if (which is a matter of its own choice at any time) it does not use or depend upon the reservation as a defense.

The paucity of international litigation in the World Court has not been occasioned by the Connally reservation for how could it possibly be a deterrent to the use of the World Court for the trial of truly international issues? On genuine questions of international law, there is a widespread current belief that international questions of consequence should be settled at the diplomatic level by way of negotiations and conferences and not at the judicial level. The world is divided into two blocs—the Communist bloc and the non-Communist bloc—and most major international disputes are between these two contending ideologies. So long as the Communist countries refuse outright to use the Court, the settlement of great international issues at the judicial level is not capable of realization. Witness the Suez question, the Berlin crisis, the tragic Hungarian problem and numerous others. The World Court has no more been bypassed and its functions unutilized than have other agencies of the United Nations. United Nations agencies, as to the settlement of international questions that from time to time disturb the peace of the world, are not being resorted to. But, instead, the major powers are resorting to conferences, regional, summit, and otherwise, organized and functioning outside the orbit of the United Nations. The Connally reservation is not in the least responsible for the lack of business in the World Court or for the failure to invoke the various agencies of the United Nations in the adjustment or settlement of international disputes.

The first step toward world law is for the nations of the world to develop the habit of submitting international disputes to the World Court for settlement

and not to beguile themselves into the idea of giving up the right to determine when a dispute is domestic and when international. The development of such a habit will result in vitalizing the World Court as an active tribunal in the settlement of disputes between nations.

Under the next subparagraph of its report, the special committee states:

"(c) The reservation, according to at least two of the judges on the Court, may be held to nullify the entire U.S. declaration under article 80. The pros and cons of this have been much discussed."

It is difficult to understand what this does to advance the argument. It is like a lawyer in an ordinary case in court, relying upon the observations of two judges in a former case, who constitute a very small percentage of the members of the court. The fact is, as already pointed out, that two other judges have upheld the validity of the so-called self-judging reservation, and another judge has held that, although such a reservation might be held ineffective, it did not void the declaration. As already indicated, the Court itself has not yet decided that such a reservation either makes a declaration invalid as a whole or void for inconsistency. As a matter of fact, the Court has no authority to make such a decision.

(d) It is here asserted that since the Connally reservation has "become the prototype for similar U.S. reservations in numerous treaties, our treaty practices have been affected with a "creeping paralysis"—weakening our bargaining power with other nations. No proof whatever is offered and no argument made with respect to these assertions; not even a declaration from anyone in the State Department. Reference is, however, made to a statement by Vice President Nixon in a speech in New York on April 13, 1959, in which he said:

"We should take the initiative in urging that in future agreements provisions be included to the effect: (1) that disputes which may arise as to the interpretation of the agreement should be submitted to the International Court of Justice at The Hague; and (2) that the nations signing the agreement should be bound by the decision of the Court in such cases."

But this does not urge that the Connally reservation be withdrawn. It merely urges a course of general conduct with respect to future agreements with other nations, and suggests that disputes be submitted on a treaty-by-treaty basis where the international character of the subject matter of the treaty has been determined by us in advance.

(e) It is here asserted that the U.S. Government "finds itself in the difficult position of being obliged (vis-a-vis, the legislative branch) to assert at least the possibility of a determination of domestic jurisdiction as a defense, rather than leaving that determination to the Court, even in cases such as *Interhandel*. As any litigator knows, such a technical defense frequently weakens the position before the Court of the party making the defense and may even decrease its standing before the Court in future cases."

The inherent difficulty with this argument is that it presumes that the United States will assert in any and every case the possibility of its own determination of domestic jurisdiction as a defense. In other words, that we will not act with the scrupulous good faith which Mr. Macomber, in his letter of May 7, 1959, to Congressman Boggs, asserts we are bound to do. Mr. Macomber states specifically:

"It was the understanding of the Senate when the automatic proviso was adopted that this reservation would never be improperly invoked and that the United States would be bound in good faith to accept the Court's jurisdiction in every case involving matters not essentially within the domestic jurisdiction of the United States."

Therefore, the argument attempted under (e) is a reflection on the good faith of the United States, unworthy of "right-thinking" lawyers.

(f) The argument attempted under this heading is also unworthy of right-thinking lawyers. It reads as follows:

"In view of the U.S. veto power, under articles 27(3) and 94 of the United Nations Charter, over ultimate enforcement by the Security Council, the really vital interests of the United States are protected regardless of any action the Court might take."

In effect, this says, "repeal the Connally reservation, declare to the World Court and to the other nations of the world that the United States has decided to leave to that Court the exclusive right to determine when a matter is international and when domestic, and to abide by its decisions in that regard and then, if subsequently the United States does not like a particular decision, it can

protect itself regardless of any action of the Court by exercising its veto power under the United Nations Charter as to any enforcement of the Court's decision." The mere suggestion of the United States giving up the Connally reservation and subsequently trying to pull its chestnuts out of the fire by exercising the veto power is an unworthy argument for giving up the Connally reservation -- better by far to keep good faith with the World Court and the other nations of the world by retaining the Connally reservation for the protection of our sovereignty and independence in our domestic affairs.

PART VI. SUMMARY OF THE REASONS FOR NOT WITHDRAWING THE CONNALLY RESERVATION

In any consideration of the matter, the historical background of events connected with the activities of the United Nations for the period 1940-50, which, as heretofore outlined, endanger and continue to endanger the sovereignty and independence of the United States and its jurisdiction over its domestic affairs must never be forgotten or overlooked. It will not do to say that these events are just past history and that we must now approach the issue of the Connally reservation with open minds and open hearts and, in the cause of world peace and world law, have implicit faith that the decisions of the World Court will conform to our American view as to what matters are domestic in character and what international. Those who forget or ignore the lessons of history or the sobering experiences of the past, not only foolishly invite the same dangers again, but often perish, whether they be individuals or nations.

The internationalists still expect to try, by and through the United Nations and its agencies, and by and through the device of treaty law to edge the United States into a world government. To prove this, one only needs to read the recent book, "Human Rights and World Order" by Moses Moskowitz, (New York: Oceana Publications, Inc.) in which the author suggests, at page 78, that the provisions of article 2(7) of the charter, designed to protect our domestic affairs from interference, can be circumvented by the use of treaties; and, of course, in the absence of a constitutional amendment, like the Bricker amendment, Mr. Moskowitz is entirely correct. Except for the Connally reservation, the World Court and the other principal agencies of the United Nations can exercise jurisdiction and control over American constitutional rights and liberties.

Mr. Moskowitz even seems to think that under article 64 of the charter, the United Nations could gradually, in violation of article 2(7), establish a world order in the field of human rights. Article 64 seems to give the United Nations authority to establish machinery for keeping under constant review and criticism the development of so-called human rights in the member states by and through requiring frequent reports from governments. In other words, constantly calling on governments to justify their laws and practices with respect to their internal social, economic, and even legal procedures.

No one can assuredly assert at this time what specific moves or events connected with the United Nations and world affairs a majority of the Senators had in mind in adopting the Connally reservation with a vote of 50 to 12. But the record, as heretofore indicated, shows at least two significant events or proposals in the United Nations prior to August 3, 1946, the date of the passage of the Connally reservation, which would have resulted in circumventing the jurisdiction of the United States over its domestic affairs. The vote in favor of the reservation was more than four times the number of votes against it; and this, after the Foreign Relations Committee had, by a substantial majority, in its report of July 25, 1946, refused to recommend the adoption of any such type of reservation as the Connally amendment, although such types of reservation were presented to the Foreign Relations Committee, notably one by Senator Warren Austin, reserving from the World Court's jurisdiction "disputes which are held by the United States to be with regard to matters which are essentially within the domestic jurisdiction of the United States." Since many of the Senators who were members of the Foreign Relations Committee and who voted not to recommend a reservation like the Connally amendment did, on August 3, vote in favor of the amendment, they must have become concerned about the World Court being accorded exclusive jurisdiction to determine, as to the United States, what matters are domestic and what are truly international. The report of the Special Committee of the American

Bar Association section of International and comparative law explains this action of the Senators voting for the Connally reservation (pp. 54 and 55 of the report) as follows:

"Whatever specific reasons were in the minds of the Senators who voted for it, we suggest that the motivating factor was the fear that, without the reservation, the Court might take jurisdiction over, and decide against the United States in some dispute of vital importance to the United States in spite of the firm and sincere position of the United States that the dispute was essentially domestic. Francis O. Wilcox put it this way:

"What prompted the Senate to adopt the Connally amendment? Very likely the action was prompted by the same feeling that caused the American delegation at San Francisco, and later the Senate, to support the veto in the United Nations Charter. It was prompted, in other words, by a desire to safeguard the vital interests of the United States." (Wilcox, "The United States Accepts Compulsory Jurisdiction," 40 Am. J. Int'l L. 699, 713 (1949).)

The writer is very glad to accept the foregoing view of Mr. Wilcox that the Senate in adopting the reservation was prompted by "desire to safeguard the vital interests of the United States." It was concern, not only for such matters as immigration, tariffs, trade barriers, et cetera, but also concern for safeguarding other matters which included the protection of our theory as to the right to own private property and our concept of freedom of speech and of press and our system of basic individual rights and liberties as protected by our own Constitution and Bill of Rights, all of which the United Nations and its agencies began to treat as matters of international concern beginning in February 1946, and for the protection of which the Bricker amendment was later proposed. The Senate was not required to give all its reasons, or any, in support of the form of reservation which it thought would adequately safeguard the vital interests of the United States. Senator Connally spoke as follows in connection with our declaration of adherence to the Court:

"I think we have the right to adhere 100 percent, if we choose, and we have the right not to adhere at all. Therefore, as between those two extremes, we have a perfect right to adopt an amendment of this character, because the charter provides that domestic questions may not be considered. The charter provides that the United Nations have no jurisdiction over domestic questions. But under the charter the Court might decide that immigration was an international question. It might decide that tariffs were an international question. It might decide that the navigation of the Panama Canal was an international question. It is pretty close to it. It might decide that the regulation of tolls through the canal was an international question. So I submit the amendment and ask that it be printed and lie on the table."

Senator Connally later explained his amendment as follows:

"The United States is the object of envy of many nations of the world and many peoples. Our Treasury is most attractive to them. Immigration to our shores is something they dream of. I do not favor and I shall not vote to make it possible for the International Court of Justice to decide whether a question of immigration to our shores is a domestic question or an international question. It is a domestic question, of course; but the Court might contend it is international in character. The Court might say, 'A man leaves one country and migrates to another, and therefore an international question is involved, and suit may be brought against the United States because it discriminates against the citizens of a certain country by not giving them a sufficiently large quota.'

"Mr. President, do we wish to submit to the International Court the question whether we have a right to levy tariffs and duties and to regulate matters of that kind? They are purely domestic questions, and I do not propose to have the International Court have jurisdiction over them."

Whatever the reasons of the Senate at the time of the passage of the Connally reservation, the reasons now for its retention are clear and manifold. It is the only real safeguard we have had during the years 1946-56 and that we still have against that school of internationalists who believe it honest and necessary for world peace to circumvent and distort the language and intentions of the charter with respect to the sovereignty and independence and the domestic affairs of the United States.

When the members of the ABA Peace and Law Committee urged the house of delegates to pass the resolution, in 1947, recommending to the Senate that it reconsider the matter of the form of the U.S. declaration under article 36(5) of the statute of the World Court and authorize the filing of a modified declara-

tion eliminating our right to determine when a matter is domestic instead of international, the members of that committee (including the writer) believed that the United Nations and its agencies would, in good faith, observe and comply with the language and intendments of the charter and the pledges and assurances of the Secretary of State, Mr. Stettinius, in connection therewith, with respect to matters affecting the sovereignty and independence of the United States and involving its domestic affairs. After definite evidence came to the attention of the members of the peace and law committee of the disregard of the language and intendments of the charter and of the disregard for the said pledges and assurances, and the members of the peace and law committee, the latter part of 1948, became disillusioned, that committee abandoned any further efforts to seek a change in the Connally reservation, and turned to the task of formulating and attempting to pass a constitutional amendment to protect the United States and its citizens against the dangers of "treaty law"—a United Nations device for circumventing article 2(7) of the charter. To have continued to urge a change in the Connally reservation would have been inconsistent and at war with the basic purposes of the Bricker amendment. So far as the ABA is concerned, the Connally reservation then became a dead issue until resurrected at the ABA meeting in Los Angeles in 1958, where the special committee on international law planning, recently appointed by President Malone, in a report to the house of delegates said:

"The committee believes that the withdrawal of the United States' reservation to the jurisdiction of the International Court, to the extent that it allows the United States unilaterally to determine which disputes lie essentially within its own jurisdiction, would be a most salutary step. It would be a demonstration of faith in the rule of law, and a persuasive example to others. We believe it would materially strengthen the position of the United States in the world community as a leader in efforts to achieve the goal of the settlement of all disputes by peaceful means."

At the same meeting, the committee on international courts of the section of international and comparative law proposed to the house the following resolution:

"Resolved, That the United States should amend its declaration accepting the compulsory jurisdiction of the International Court of Justice to omit therefrom the limitation imposed by the Connally amendment so that paragraph (b) of the provisos would read:

"(b) disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America; * * *."

The house took no action on either of these proposals, but it was clear that the forces of internationalism that have as their ultimate objective putting the United States into some form of world government are on the march again, after some years of quiescence due to the exposure that had been made of their activities and purposes in the great fight for the Bricker amendment. In 1958, they felt safe in assuming that many members of the U.S. Senate and of the American bar and of the public generally had forgotten the events (1946-56) connected with the United Nations and its agencies, designed to circumvent the language and intendments of the charter with respect to control of our domestic affairs; and that it was opportune to support a movement for the repeal of the Connally reservation, particularly in view of the fact that several attractive slogans had been developed with which to beguile the American people, both lawyers and laymen—"World peace," "World order," "World peace under law," et cetera.

These proposals at the Los Angeles meeting have now culminated in the 80-page "Report of the Special Committee of the Section of International and Comparative Law" (approved by the section, August 1959), which has been recently published and which is to be widely circulated (if the consent of the ABA house of delegates can be obtained) as a chief propaganda handbook to further the movement for the repeal of the Connally reservation. All of the "arguments" listed in this handbook for the repeal of the Connally reservation have been noted and answered previously in part V of this statement. However, several general observations should be made with respect to matters not included in the list of "arguments," but imbedded in the text of the report with the obvious purpose of persuading the reader that the repeal of the Connally reservation is not a matter of much moment after all, because the problem is one of very "limited nature." Thus, it is naively suggested at page 53 of the report that since, under U.S. adherence to the World Court, it may "at any time terminate its entire

declaration of adherence including its acceptance of jurisdiction, on 6 months' notice," the problem of whether or not the Connally reservation should be repealed is limited and not of widespread importance. Just exactly why this characterizes the problem as "limited" or of less importance, it is difficult to understand.

Another naive suggestion is made on page 52 of the report to the effect that the United States really does not require the protection of the Connally reservation because its sovereignty and its domestic affairs are fully protected by the provisions of article 2(7) of the charter; but this ignores the undisputed fact that the United Nations and its agencies have treated this article as a dead letter by attempting to circumvent it in various ways as heretofore set forth in part IV of this statement, and the further historical fact that it has, in effect, been declared to be a nullity by such pronouncements as those of Mr. John P. Humphrey, first Director of the U.N. Commission on Human Rights in 1948, and of Mr. Moses Moskowitz (of the United Nations staff) in 1949, and by pronouncement of the Acheson State Department in 1950 (State Department Publication 3972) and by recent pronouncements, such as those made by Mr. Moskowitz in his recent book, "Human Rights and World Order" (all of which have already been described and referred to). We are also assured, on page 53 of the report of the special committee of the section, that, under article 36 of the statute, the adherence to the jurisdiction of the World Court on the part of the United States, even with the repeal of the Connally reservation, is limited to disputes "hereafter arising." This is a great comfort to know that the Court, through the exercise of its jurisdiction to determine what is a domestic and what is an international affair, would be limited to claiming jurisdiction over the treatment of future matters only. In other words, it could not claim jurisdiction, as it was once suggested the United Nations should do, by entertaining a complaint as to how Judge Medina conducted the trial of the 11 Communists in the Federal court of New York, or a complaint of how the court, in the trial of Sacco-Vanzetti, conducted the proceedings there; but could claim jurisdiction over only future disputes involving jurisdiction over our domestic affairs. The writer supposed it was clear to the authors of the section report that this is the very thing that those who are interested in protecting the independence and sovereignty of the United States are chiefly talking about—future disputes.

It has probably been forgotten that on March 4, 1949, a formal complaint was received and filed by the United Nations, lodged by one of its consultative organizations, condemning the United States for trying the 11 Communists in the Federal court of New York as a violation of the United Nations Declaration of Human Rights. This complaint was filed by the International Association of Democratic Lawyers (35 A.B.A.J. 290).

Other general "comforting" or reassuring observations are made in the report regarding what is designated as "the limited nature of the problem" as to the nonseriousness of the effect of a withdrawal of the Connally reservation; but there is not space, nor is there any occasion here, for commenting further on these naive aspects of the report.

Turning to pages 63 and 64 of the report, special emphasis is laid on the fact that the house of delegates is still technically on record as having adopted a resolution (February 1947) recommending the withdrawal of the Connally reservation. Reference is also made to the fact that at the 1947 annual meeting of the association, the assembly is on record as concurring in the action of the house.

The report then undertakes to publicly suggest that the house of delegates favors and still supports and is now, in the year 1950, supporting and backing the withdrawal of the Connally reservation, completely ignoring without the slightest mention the historical background of events in connection with the United Nations and its agencies which have occurred since the action of the house in 1947, and which have changed the views of many members of the house.

The report undertakes to accomplish this desired result in behalf of the present movement to have the Senate withdraw the Connally reservation by a general observation which reads as follows:

"Since the house of delegates is thus already firmly on record against the United States self-judging domestic jurisdiction reservation there is no need for a recommendation of further action by the section or the association" (p. 64 of the report).

It would seem that, in all fairness, the special committee and the section, in connection with such an extended report to be distributed for the information

of the public as well as the members of the American Bar Association, was under some obligation to set forth or at least include a paragraph disclosing that since the action of the house, many significant events have occurred in connection with the activities of the United Nations and its agencies which were not known to or foreseen by the members of the house in 1947, when it took definitive action on this matter. Obviously, the committee and the section decided to follow the technique of not disclosing any matters or events which would be inconsistent with their firm purpose to further the interests of internationalism as against the protection of American sovereignty and independence with respect to the jurisdiction of the United States over its domestic affairs.

The renewed activity since 1958 with respect to the Connally reservation and the movement to secure action on the part of the Government and the Senate of the United States, by way of withdrawing it, has been largely stimulated by the activities of a group in the American Bar Association, most of whom fought the idea of a constitutional amendment to protect American rights against the dangers of "treaty law"; but devoted their efforts in the American Bar Association House of Delegates over the several years beginning the latter part of 1948 to defeat the proposal for such an amendment and to have the House approve United Nations conventions, like the Genocide Convention, interfering with our domestic affairs have failed. Nevertheless, they have always been outvoted on every aspect of this debate, whether concerning the adoption of a constitutional amendment or specific debates with respect to covenants and proposals designed to interfere in the domestic affairs of the American people. It is appropriate to remind the internationalists that the house of delegates is also on record with respect to these matters. It is, therefore, no more a non sequitur to say that because, since the latter part of 1948, the house of delegates is on record in a variety of instances as favoring the protection of American domestic jurisdiction as against any extension by the United Nations of its jurisdiction over these matters, this means that the vote of the house with respect to the Connally reservation in February 1947 has been officially nullified, than it is a non sequitur for the committee and the section to say that, because of the vote of the house in February 1947, with respect to the withdrawal of the Connally reservation, the attitude of the house and the American Bar Association remains today the same as in 1947—in spite of successions of acts and votes by the house disclosing, since the latter part of 1948, that it has opposed every and all attempts by the U.N. to extend its jurisdiction over our domestic affairs.

Doubtless even President Eisenhower and Vice President Nixon have been influenced by the recent activity of the internationalist group in the American Bar Association, who have undertaken to speak for the whole association. At any rate, the President and the Vice President, without giving any particular reasons therefor, seem to have stated or at least intimated in various public utterances since April of 1959 that they favor giving serious consideration to a modification of the Connally reservation. So far as I can find, there is nothing in their public utterances prior to that time which suggests that they ever heard of the Connally reservation or that they have since had any opportunity to give the matter any consideration by way of research and examination into its basic purposes and the dangers that could flow from according the World Court exclusive jurisdiction to determine as to the United States what matters are domestic and what are international. They seem to believe, somehow, that the withdrawal of the Connally reservation will be a great contribution to world peace and that it would definitely increase the stature of the World Court and the attitude of nations with respect to a resort to it for the settlement of international disputes. But they have not had the benefit of being informed regarding the facts and arguments on the other side.

It is said in the Baltimore Sun of January 13, 1960, in reporting the intention of the Senate Foreign Relations Committee to hold hearings on Senator Humphrey's resolution proposing the withdrawal of the Connally reservation, that there are grave doubts on the part of some near the President and the Vice President, as to whether it "would be wise" in the context of the current international situation to press the proposal to a vote in the Senate, because it is doubtful whether it can secure the necessary two-thirds vote for passage. This would indicate that some expect substantial opposition in the Senate or at least that there may be a good chance of its not passing by the required two-thirds majority.

It would seem to be the duty of the house of delegates of the ABA, before approving any part of the present report of the special committee of the sec-

tion, to direct some less biased committee of the house to make a study of the issue that has now arisen with respect to the Connally reservation and make a report to the house so that the members of the house may be better advised of the facts and events with respect to the Connally reservation, as a basis for determining whether they favor its withdrawal or its retention. Meanwhile, the Foreign Relations Committee of the Senate should not accept the report of the special committee of the American Bar Association section of the international and comparative law as representing the views of the present members of the house of delegates.

It is earnestly suggested that since questions of great legal significance are involved in the issue of the withdrawal of the Connally reservation—particularly questions of constitutional law—this phase of the matter should be referred, at an appropriate time, to the Judiciary Committee of the Senate.

POSTSCRIPT

Though a statement of this character should be written as impersonally and objectively as possible, it is sometimes not inappropriate under a claim of personal privilege to add a personal note. A great deal is being said today about the "rule of law"—as though the idea and the phrase had just been discovered. I have been in the practice of law since 1911 and a member of the American Bar Association since 1921 and served it in a variety of capacities—having been a member of the house of delegates continuously since 1942. During all these periods, I have never, on any occasion, failed to speak out in support of the "rule of law." As incoming president of the American Bar Association, in Seattle in September 1948, I made the following statement:

"We of this profession are sworn to uphold the Constitution and laws of our country, its form of government, and the institutions and liberties which have made our Nation great and our people free. We are pledged to a Federal Republic, to the constitutional separation of the powers of government, to the rights and duties of States and localities, to resistance to encroachments by any one department of government upon any other, to the defense of individual rights against arbitrary powers and against bureaucratic centralizations which break down the impartial rule of law and substitute uncontrolled official discretions."

From the time of the court-packing plan, I have prepared and published a large number of pamphlets, at my own expense, attempting to clarify in the public mind issues both domestic and international that, in my opinion, seemed likely to adversely affect our form of government and our constitutional rights and liberties. I have also testified before and filed statements with Senate committees on these issues.

The writer has always believed that it is a primary duty of the American Bar Association and other bar associations, and the members thereof, to stimulate interest in, and a respect for, our law and our country. We also can and should make our contribution to the cause of world peace and participate in programs therefor, but this is not to say that no identity or distinction should be preserved in the minds of the American people between domestic and international affairs, unless we have come to the point of subscribing to the State Department pronouncement of 1950 (State Department Publication 3972) that "there is now no longer any difference between domestic and foreign affairs." I make a point of this because I am still old fashioned enough to believe that the American Bar Association and its members have a primary duty first of all "to uphold the Constitution and laws of our country, its form of government and the institutions and liberties which have made our Nation great and our people free," and are bound not to confuse this primary duty with international objectives.

As a member of the ABA Peace and Law Committee in 1944 and 1945, I wholeheartedly favored the formation of an organization of nations to discuss and debate world issues in open conference in an attempt to secure world peace—and even with the power, without becoming a world government, to suppress aggression. When at the Conference at San Francisco in June 1945, the United Nations Organization (then called the U.N.O.) was set up, I felt that the United States could and should become a member and that doing so would not jeopardize its form of government or its institutions and that our control over our domestic affairs was fully protected. This view began to change in the latter part of 1948, and by 1952, when the house of delegates passed its formal resolution for a constitutional amendment to protect the

United States and its citizens against the dangers of "treaty law," I had completely changed my point of view. By then, it was clearly evident to me, as it was to other members of the then peace and law committee, that the United Nations and its agencies were ignoring the language and intendments of the Charter with respect to the protection of the domestic affairs of the Member States. As a result, I concluded that the withdrawal of the Connally reservation would jeopardize our form of government and its institutions by according to the World Court, as an agency of the United Nations, the exclusive right to determine what matters are and what matters are not within the domestic jurisdiction of the United States. Even such an ardent supporter of the United Nations as Judge William L. Ransom, for years chairman of the ABA Peace and Law Committee (before he died in 1949), shared my view—or, rather, I shared his view—that by the latter part of 1948 there were forces operating in the United Nations causing it and its agencies to ignore and distort the plain language and intendments of the Charter with respect to noninterference in domestic affairs. He not only urged me strongly to oppose those forces and their programs by public utterances as the newly elected president of the ABA but to file protests in the State Department and with Government officials and to urge the house of delegates to support a constitutional amendment against the dangers of "treaty law."

Finally, as a matter of personal privilege, I wish to say that I somewhat resent some of my friends, particularly in the higher echelons of the American Bar Association, publicly stating or intimating that, because of my support of the 1947 resolution of the house of delegates, recommending to the Senate a withdrawal of the Connally reservation—particularly those who have been put on notice to the contrary—that I still entertain my 1947 point of view.

I hope this "statement" clearly indicates and sets at rest my position with respect to the present movement to try to bring about the withdrawal of the Connally reservation. This statement will, in due course, be put in the form of a printed pamphlet and copies distributed to all Members of the Congress of the United States, to the State Department, to the members of the American Bar Association House of Delegates, to the officers of the American Bar Association, and to the principal newspapers throughout the country. Copies will be available to others who may be interested.

APPENDIX A

BIOGRAPHICAL SKETCH OF FRANK E. HOLMAN

Born in Sandy City, Utah, January 7, 1886; A.B., University of Utah, 1908; Rhodes scholar, Oxford, England, 1908; B.A. in jurisprudence, Oxford, 1910; M.A., Oxford, 1914; admitted to Washington Bar, 1911; Utah Bar, 1912; instructor in law, University of Utah, 1912-13; dean, Utah Law School, 1913-15; chairman, Utah State Board of Bar Examiners; vice president, Utah State Bar, 1923; practiced, Salt Lake City, 1915-24; practiced, Seattle, 1924 to date; admitted U.S. Supreme Court, 1921; admitted to practice in various Western State and Federal courts; senior partner, Holman, Mickelwait, Marion, Black & Perkins, Seattle; president, Seattle Bar Association, 1941; president, Washington State Bar Association, 1945; chairman, Committee for Revision of Washington Corporation Laws; member, American Bar Association since 1921; member, house of delegates continuously since 1942; member, Special Committee for the Organization of the Nations for Peace and Law, 1944 and 1945; member, Special Committee for Peace and Law Through United Nations, 1946 and 1947; membership committee, 1943 and 1944; Committee on Jurisprudence and Judicial Reform, 1943; Washington committee associated with the American Bar Association Committee on Improving the Administration of Justice; co-convenor, Seattle regional conference on World Court, 1946; co-convenor, Seattle regional conference on progressive development of international law, 1947; committee on credentials and admissions of the house of delegates, 1946 and 1947; board of directors, American Bar Association Endowment; advisory board of the American Bar Association Journal; Committee on Assistance to Lawyers in Devastated Countries, 1949-51; Committee on Scope and Correlation of Work, 1950-53; president of the American Bar Association, 1948-49; chairman, alien enemy hearing boards for the western district of Washington; member, National Panel of Alien Enemy Examiners; Seattle Armed Forces Advisory Committee; trustee, School of Public Law (Washington, D.C.); American Society of International Law; board of directors of the Pacific National Bank of Seattle; advisory board of Seattle

Children's Orthopedic Hospital; trustee, Carman Scholarship Foundation; honorary member, the Order of the Coif; honorary member, Phi Delta Phi (Ballinger Inn and Tillman D. Johnson Inn), International Legal Fraternity; honorary member, District of Columbia Bar Association; honorary member, Canadian Bar Association; honorary member, the Federal Bar Association; Veterans of Foreign Wars Certificate of Merit "for outstanding contributions toward preservation of our American way of life," December 20, 1950; Cross of Chevalier of the Legion of Honor (France), January 1951; Marine Corps League Meritorious Service Award in appreciation and gratitude for distinguished service in the interests of the United States of America, the U.S. Marine Corps and the Marine Corps League, September 21, 1951; the American Freedom Award, 1952; VFW Gold Medal Award, 1953; American Bar Association Gold Medal Award, 1953, for conspicuous service in the field of American jurisprudence; awarded plaque as Seattle's first citizen for 1953; Seattle Bar Association Distinguished Service Citation, 1953; William Volker Distinguished Service Award, 1954; Award of Merit, Washington State Daughters of the American Revolution, 1957; fellow of the American Bar Foundation, 1957; honorary doctor of laws, University of Utah, 1958.

STATEMENT OF THE AMERICAN ASSOCIATION OF UNIVERSITY WOMEN

Submitted January 29, 1960, on behalf of Dr. Catherine S. Sims, chairman, International Relations Committee, AAUW; and Mrs. Walter M. Bain, chairman, Legislative Program Committee, AAUW

The American Association of University Women welcomes this opportunity to submit a statement to the Senate Foreign Relations Committee in support of action to repeal the Connally amendment.

Since the promulgation of the Dumbarton Oaks Proposals in 1944, the AAUW has strongly endorsed full U.S. participation in the United Nations and its specialized agencies. In 1944 and 1945 the association carried on an intensive educational campaign to inform its membership about the proposed general international organization. During the United Nations Conference on International Organization at San Francisco in the spring of 1945, representatives of the AAUW served as specially invited consultants to the U.S. delegation to the Conference. We testified in support of favorable Senate action on the charter when your committee held hearings in July 1945. Since that time our biennial membership conventions have repeatedly and overwhelmingly voted resolutions endorsing the U.N. Most recently in June 1959 at our Kansas City convention, the delegates approved as follows:

"We reaffirm our faith in the United Nations as a flexible and viable institution for the achievement of international cooperation. We will continue to support measures to make the United Nations and its affiliated agencies more effective."

Our local branches, situated in all the 50 States, Guam, and the District of Columbia, with a combined membership of over 140,000, continue to sponsor programs and study groups on the United Nations and participate actively in community educational projects on its behalf.

This past year the association's international relations committee has urged attention to problems of pacific settlement of disputes under the United Nations, especially the International Court of Justice. This recommendation was made in keeping with our aspirations for making the United Nations more effective, and in anticipation of arousing greater public interest and support of the President's call for a "reexamination of our relation to the International Court." In April 1959 the committee itself passed, after study and discussion, the following resolution:

"It is the policy of the AAUW to support the United Nations and its affiliated agencies. In conformity with this policy we favor the cooperation of the United States in measures to enlarge the effectiveness of the International Court of Justice. We therefore wish to express our support and approval of the proposal to amend the reservation attached to our acceptance of the 'optional clause' of the statute of the Court by substituting the words 'by principles of international law' for the words 'by the United States.'"

We cite this background as an indication of AAUW's active and continuous interest in United Nations affairs and in the role of the United States in them. In supporting repeal of the Connally amendment, we act in light of this concern, having considered two fundamental questions. First, would the repeal of the

self-judging reservation damage the security of the United States? Second, what would be the effect of such a step on the United States? We should like to consider each question in turn.

1. Would the repeal of the self-judging reservation damage the security of the United States?

Our conclusion is that it would not. On the contrary this action may very well enhance the stature of the United States, for it would demonstrate in a practical way the sincerity of repeated American declarations in support of the objective that "the rule of law may replace the rule of force in the affairs of nations."

The purpose of the Connally rider is to insure that other nations and international bodies will not interfere with questions of U.S. domestic jurisdiction. This is a good and valid purpose. However, the adherents of the Connally rider seem not to have given due weight to the fact that the protection they seek is already provided both in the charter of the United Nations and in the statute of the Court. The Court, as one of the principle organs of the United Nations, is subject to the charter. It is, therefore, bound by article 2, paragraph 7, which provides that "nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present charter." Further, the jurisdiction of the Court, as stated in article 36, paragraph 1 of the statute, clearly deals with cases referred to it by the parties themselves and with U.N. matters. The "optional clause," to which the United States adhered and in which the self-judging reservation is included, again is concerned only with interpretation of treaties, questions of international law, breaches of international obligations, and reparations for them. The United States is fully able to protect its vital interests in such instances through its treaty ratification process, precise and prompt statements on questions of international law, its foreign policy decisions, and ultimately its veto in the Security Council. Any fears which have arisen about international meddling in U.S. policies on tariffs, immigration, and even the Panama Canal can be set aside in light of the nature of the jurisdiction of the Court, which the Court itself has tended to interpret in a narrow and restricted fashion.

2. What would be the effect of the repeal of the self-judging reservation?

Here there are possibilities, first, for strengthening the United Nations and, second, for influencing world climate in favor of greater use of judicial processes for pacific settlement matters. For instance:

(a) The United States, no longer being tied by the self-judging reservation, which under the statute of the Court may be used on a reciprocal basis, frees itself from the situation in which the reservation might be used by the defendant against whom we might wish to bring suit, thus curtailing full use of the Court. The irony of such a condition is well illustrated in the *Norwegian Loans* case.

(b) The United States is a country with a heritage of faith in the law and judicial processes. Removal of the self-judging reservation should arouse added public, and especially governmental, interest in the Court. If such awareness could be followed by a determined U.S. policy of urging and supporting use of the Court, both for its advisory opinions as well as in contentious cases, the Court might begin to assume a role commensurate with its potentialities in world affairs. It has been repeatedly stated that the United Nations must be used by its member governments if it is to fulfill its role in international society. Nowhere is this more true than in the case of the Court.

(c) Vice President Nixon in his speech to the Academy of Political Science has proposed greater use of the Court as a device for combatting coldwar differences with the Soviet Union. Insofar as a judicial approach to primarily political problems can better United States and Soviet relations, this is commendable. But the use of the Court in this and in many other situations is desired, and desired now, because of the example it provides for the many new nations who have recently joined the United Nations or expect to join the community of nations in the next 10 to 15 years. The patterns of international law which currently prevail are those developed by the European powers in their emergence from medieval society. Frequently the new nations of Asia and Africa have tended to question, and even reject, systems and procedures emanating from the

former colonial nations. It is critically important, therefore, for these emerging nations, as early as possible in their independent history, to accept compulsory jurisdiction and to acquire the habit of turning to the Court when differences arise. And the possibilities for such difficulties, for instance, in a continent like Africa, with uncertain boundaries, nomadic groups, and limited experience in governmental and international affairs are numerous. The example set by the United States and the other older powers can help determine the receptivity the new nations give to legal action for settling disputes. Just as the U.N. Geneva Conference on the Law of the Sea in 1958 offered opportunity for these new countries to take part in codifying these international laws, thereby making them part of their tradition in international affairs, so increased activity at the Court would enhance its prestige and make its use a more normal occurrence in solving their problems.

For these reasons the American Association of University Women urges the Senate committee to consider favorably the repeal of the self-judging reservation of U.S. adherence to the compulsory jurisdiction of the International Court of Justice.

STATEMENT OF W. HUME EVERETT, ATTORNEY AT LAW, HOUSTON, TEX., FEBRUARY 17, 1960

I appreciate the courtesy extended to me in having my statement included in the record. My name is W. Hume Everett, and I live in Houston, Tex. I have been engaged in the practice of the law continuously since 1933 before the courts in the States of Texas and Wyoming, before the Supreme Court of the United States, and before numerous "inferior courts as the Congress did from time to time ordain and establish." I speak only and wholly for myself as a native-born American lawyer who has taken numerous oaths to "support and defend the Constitution of the United States: So help me God!"

Other statements made or presented to this committee adequately explain the background and context of the Connally amendment to Senate Resolution 196 of August 2, 1946, surrendering jurisdiction in specified matters to the International Court of Justice, but providing that the jurisdiction of that Court "shall not apply to * * * disputes with respect to matters which are essentially within the domestic jurisdiction of the United States as determined by the United States." Senate Resolution 94 would delete the last six words.

To defeat Senate Resolution 94 should be the beginning point only. One helpful step under which some of our sovereignty might be preserved from the effects of treaties and executive agreements would be to add to the Connally amendment an additional phrase so that the entire clause would read "as determined by the U.S. Congress on a case-by-case basis." With such additional wording the Congress, or, without such wording, the Senate could and should determine in each case whether any specific matter in controversy with any other nation would be a proper case in which to submit the claims by or against the United States to the jurisdiction of any foreign or international court of justice.

Although the statute of the International Court of Justice (hereinafter called "World Court") provides, in article 34, that "only states may be parties in cases before the Court," there is no requirement that the claims of the United States must be recognized as property rights which cannot be taken or destroyed without compensation. Under time-tested arbitration procedures, even though the United States does have the power to submit to arbitration the claims of United States citizens against the foreign government, and to extinguish those claims in dire circumstances, there is authority of our Supreme Court that such claims are property rights of the citizens which cannot be taken or destroyed without compensation. Moreover, if a claim is submitted to arbitration, it must be done with due regard to the rights of the citizens, and ample provision made for them to be heard and present the evidence upon which they rely.¹ In the World Court setup, only omnipotent government (the state) through such agents as it selects may be heard, and then in secret if the World Court so determines, or if "the parties demand that the public be not admitted."²

¹ 48 C.J.S., p. 33, and cases cited.

² Art. 46, Statute of International Court of Justice.

No proponent of the one-world government movement, or advocate for Senate Resolution 104, has advanced any sound criticism of the present and time-tested method of settlement for international differences. At least since August 20, 1910, the congressionally declared policy of the United States has been "to adjust and settle its international disputes through mediation or arbitration to the end that war may be honorably avoided."² Even the U.N. Charter recognizes that the parties (states) to a dispute "seek a solution by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or to the peaceful means of their own choice."³

It should be emphasized that exhaustion of these time-tested procedures (under which hundreds of cases have been satisfactorily handled) is not a prerequisite to jurisdiction of the World Court. Could it be that the proponents of one-world government and of Senate Resolution 104 feel that the World Court is the last step necessary for absolute domination of the United States by the United Nations, under which any idea of constitutional restrictions and guarantees, such as right to trial by jury, and the taking of private property without just compensation become old-fashioned, outmoded, and no longer available to any citizen of the United States?

Instead of striking the Connally amendment from Senate Resolution 100, the committee should now recommend and insist that Senate Resolution 100 be repealed in its entirety. This simple expedient would again put these United States in at least an equal position with Soviet Russia and other Communist governments. It would not harm our position with friendly nations, in that we would still have available the time-tested methods for settlement of international disputes, leaving with honorable men the constitutional rights and privileges of U.S. citizens intact, yet without in any manner changing or altering the congressional policy which, as above referred to, has been in effect continuously since 1910.

The matter of submitting any dispute to the World Court, whether a matter essentially within the domestic jurisdiction of the United States, or otherwise, requires an examination and understanding of sovereignty. What is the position of citizens of the United States to their Federal Government? Is there a federal sovereignty under which U.S. citizens can be made "subjects"? Are there no absolutes in the United States beyond which power and force of government cannot go? Is there any such thing as law without force?⁴

The answers to these serious questions are to be found in our own Constitution and early cases decided by our own Supreme Court which recognized that sovereignty and jurisdiction are inextricably connected, and to be carefully safeguarded. This is made clear in *Chisholm v. Georgia*,⁵ the ultimate result of which was the 11th amendment to the Constitution.⁶

Prior to amendment XI, the Constitution provided that the Supreme Court should have jurisdiction over controversies "between States and citizens of another State." Georgia had refused to appear and answer plaintiff Chisholm, because she was a sovereign State. Chief Justice Jay makes three inquiries: "1st. In what sense Georgia is a sovereign State. 2d. Whether suability is incompatible with such sovereignty. 3d. Whether the Constitution (to which Georgia is a party) authorizes such an action against her."⁷ After pointing out that our sovereignty commenced with the Declaration of Independence and that the people in their collective and national capacity established the Constitution, exercising "their own rights and their own proper sovereignty, * * *" Chief Justice Jay compares the sovereignties of the people of the United States with sovereignties in Europe (and particularly in England) where the prince is the sovereign, and the people his subjects; it regards his person as the object of allegiance, and excludes the idea of his being on an equal footing with a subject either in a court of justice, or elsewhere; that because of the position held by the sovereign prince he could not be amenable to a court of justice or subjected to judicial control and actually constrained, because his position was incompatible with such

² 22 U.S.C.A., par. 261.

³ Ch. VI, art. 33, U.N. Charter.

⁴ "The idea that there is or can be an effective manmade law without force is utterly ridiculous. Recent incidents in this country enforcing a court decree with bayonets should prove the point. George Washington correctly told us that "Government is not reason, it is not eloquence, it is force. Like fire, a dangerous servant and a fearful master."

⁵ 2 Dallam. 418.

⁶ Art. XI, Constitution. "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state."

⁷ 2 Dallam. 462.

sovereignty, holding that "No such ideas obtain here; at the Revolution, the sovereignty devolved on the people; and they are truly the sovereigns of the country, but they are sovereigns without subjects * * * and have none to govern but themselves; the citizens of America are equal as fellow citizens, and as joint tenants in the sovereignty."

The court held that the people by the Constitution (prior to amendment XI) had, through the compact of the States as evidenced by the Constitution and with the surrender of sovereignty evidenced by the ratification thereof by the various sovereign States, conferred jurisdiction upon a constitutional court to determine this controversy between the State of Georgia and a citizen of another State.

Referring to that provision of the Constitution under which the Supreme Court of the United States was given jurisdiction and the power to determine that jurisdiction in controversies between States and citizens of another State, Chief Justice Jay concludes in the penultimate paragraph of the court's opinion:

"The extension of the Judiciary power of the United States to such controversies, appears to me to be wise, because it is honest, and because it is useful. It is honest, because it provides for doing justice without respect of persons, and by securing individual citizens as well as States, in their respective rights, performs the promise which every free Government makes to every free citizen, of equal justice and protection. It is useful, because it is honest, because it leaves not even the most obscure and friendless citizen without means of obtaining justice from a neighboring State; because it obviates occasions of quarrels between States on account of the claims of their respective citizens; because it recognizes and strongly rests on this great moral truth, that justice is the same whether due from one man or a million, or from a million to one man; because it teaches and greatly appreciates the value of our free republican national government, which places all our citizens on an equal footing, and enables each and every one of them to obtain justice without any danger of being overborne by the weight and number of their opponents; and because it brings into action, and enforces this great and glorious principle, that the people are the sovereign of this country, and consequently that fellow citizens and joint sovereigns cannot be degraded by appearing with each other in their own courts to have their controversies determined. *The people have reason to prize and rejoice in such valuable privileges; and they ought not to forget, that nothing but the free course of constitutional law and government can insure the continuance and enjoyment of them.*"¹⁰

As Justice Jay plainly states, all jurisdiction implies superiority of power. From that correct concept, the surrender of power to determine jurisdiction implies, if not expressly recognizes, that the World Court would have the superiority of power over the sovereign people of the United States and over our sovereignty in making a determination which not even the Congress of the United States could, or should, surrender to a one-world United Nations government, or its juristic World Court arm."¹¹

Rather than considering this move to surrender sovereignty through the jurisdiction determining surrender to a one-world court, this committee might well use its time to make an immediate and full-scale investigation of the extent to which our elected representatives and officials have endeavored otherwise to surrender our sovereignty, our Constitution, and the concomitant restrictions upon those who govern. This to be followed by a full and complete report to the Congress, and to the sovereign citizens of these United States. If that investigation revealed, as I think it would, that much of our sovereignty and many of the freedoms and rights (reserved to the States and to the people by the United States Constitution and Bill of Rights) have been surrendered,¹² then this committee and the Congress, in the interest of maintaining our constitutional

¹⁰ 2 Dallam, 468.

¹¹ 2 Dallam, 466.

¹² Even a cursory reading of the United Nations Charter and of the Statute of the International Court of Justice will indicate that there are no absolutes beyond which the World Court could not go, and that the objectives, precepts and desirabilities, the rule of law, and justice, so aptly described in the foregoing quotation from *Chisholm v. Ga.* are not to be found by, through, or under the one-world government of the United Nations, through the World Court, whose decrees must be made effective by the application of force—not law, but force. (See ch. VII, arts. 39–51, inclusive, U.N. Charter, which bristles with force.)

¹³ See "The United Nations: Planned Tyranny," by Orval Watts; "Behind the U.N. Front," by Alice Widener; "Human Rights and the United Nations," by Russell J. Clinchy; "The U.N. Record," by Chesly Manly.

Republic and in preserving these United States as a sovereign nation of free people, would be dutybound to take such steps as are necessary to restore and preserve the rights which Congress or the executive department have endeavored to surrender.

In surrendering our sovereignty and our historic right to determine what matters are essentially within the domestic jurisdiction of the United States, we appear to be confronted with a strange paradox. U.S. citizens are elected to Congress or to Executive Office by virtue of the provisions of the U.S. Constitution, yet we find those citizens in the exercise of the very limited powers granted disregarding the chains and limitations placed upon them by the Constitution and the Bill of Rights. Have oaths of office ceased to have any meaning?

Even though our own Supreme Court has said that the President is the sole organ of the United States in international or treaty affairs, does that mean that the Executive voice alone is to be heard? Has that voice presumed to arrogate unto the executive branch of the Government the princely powers referred to by Chief Justice Jay, thereby relegating citizens of the United States to the status of subjects? Has that voice become so omnipotent (whether expressed by one man, or by a myriad of bureaucrats, or by our own Supreme Court, or by Congress) as to be beyond toleration or question?¹³ Arbitrary power and force cannot be more plainly defined. Unless this committee and the American people are now ready to stand up and fight for the rights reserved to themselves by their forebears, the Constitution and the Bill of Rights will be meaningless—except that the final disregard of liberty and freedom, of dignity of the individual and of God in government may be recorded in history as the day that Senate Resolution 94 was adopted.

There are no absolutes in the World Court.¹⁴ A private citizen, or a state, cannot be a party to any dispute therein. The World Court is not bound to follow any constitution, any common law, or any system of law. Its decisions have no binding force, except between the parties, and in respect of that particular case¹⁵ so that it is plainly contradictory to reason to assume that it could ever establish any system based upon judicial precedent. Last, but not least, probably the most objectionable feature of the whole World Court setup is the provision of the United Nations Charter¹⁶ and of the statute permitting and requiring advisory opinions. Let us see what a prominent U.S. Senator had to say concerning this function.¹⁷

"We are living under a written Constitution—one people, with one destiny, involved in a common concern, and we would not think of giving the Congress or the President power to call upon the U.S. Supreme Court for an opinion upon any question they might see fit to submit to it. But it is proposed here that with 11 judges, probably all of whom and almost surely 10 of whom will have been reared under foreign laws and foreign institutions, the Court may be called upon to pass on any question or any point which the Council or the Assembly may see fit to submit to it. There is no limit of power, save the will of the Council and of 11 men. It is a government of men and not of law. It is international bureaucracy. It is the most ambitious scheme to place the interests of millions under the unbridled and undefined power of 11 men that I know of in all the efforts of the few to steal power from the many."

¹³ Prior to 1920 treaty power appropriately had been placed in the President and was declined to include all those subjects in the ordinary intercourse of nations; was considered to extend to and be legal only in those matters "which are consistent with the nature of our institutions, and the distribution of powers between the General and State Governments" (*Holmes v. Jennison*, 14 Pet. 540, 569 (1840)). Or, as stated in a later case "if not inconsistent with the nature of our Government and the relation between the States and the United States" (*Holden v. Joy*, 17 Wall. 211, 242-243 (1872)).

¹⁴ Art. 38, statute, International Court of Justice.

¹⁵ Art. 59, statute, International Court of Justice.

¹⁶ Art. 96, statute, International Court of Justice.

¹⁷ From speech of Hon. William E. Borah, Congressional Record, Jan. 18, 1926.

STATEMENT OF DR. CHARLES S. COLLIER, PROFESSOR OF LAW, UNIVERSITY OF HOUSTON, HOUSTON, TEX.

I

The proposed resolution, Senate Resolution 94, now before this honorable committee of the U.S. Senate, would, if adopted by the constitutionally requisite vote of the Senate, and in accordance with the recommendation of President Eisenhower, have the effect of withdrawing or expunging from the operative terms of the "U.S. declaration recognizing the compulsory jurisdiction of the International Court of Justice," the brief, but highly significant clause, now an integral part of that declaration, that is very commonly referred to as the Connally amendment.

My first point is that this so-called Connally amendment, might more accurately be designated as the Connally reservation clause, in the U.S. declaration just referred to. Actually, the words of this Connally reservation clause are an integral and essential part of the original U.S. declaration. They were not an amendment added later to that original official declaration of the United States in regard to the jurisdiction of the International Court. This point, has, I believe, a real bearing, and, an adverse bearing, on the merits of the argument in favor of canceling out the words of the Connally reservation clause. For that reservation is in no fair sense an arbitrary, or external, sort of amendment or alteration, in the original action of the United States, but is a vital, organic part of the basic commitment actually made in the first instance by the United States in relation to the accepted jurisdiction of the International Court.

The term "amendment" as applied to the Connally reservation clause, was derived from the fact that these words were added in the course of senatorial debate and modified somewhat the meaning of the language at first employed by the Senator who introduced the primary resolution. But from the viewpoint of public opinion in the United States, and as well as from the viewpoint of other independent nations, the terms of the Connally reservation were an essential and highly important element or constituent part in the final action of the United States in its national decision to recognize with certain reservations, the compulsory jurisdiction of the International Court of Justice just formed (or re-formed) under the auspices of the United Nations.

I desire to stress as a second point, and as closely as possible to the outset of my discussion, that quite apart from the few but weighty words of the Connally reservation clause, the U.S. declaration as promulgated by President Truman, in accordance with the final resolution of the Senate of the United States, adopted by the Senate on August 2, 1946, sets forth other distinct and highly important reservations on the part of the United States as to the compulsory jurisdiction of the International Court, which it may prove wholly impossible to maintain in fact and in practice, if and when the qualified veto power on the part of the United States as to the exercise of any jurisdiction by the International Court over matters within the domestic jurisdiction of the United States, were to be abrogated. This qualified veto power that may now be exercised by the United States resides in the language of the Connally reservation clause. But this reserved power, so valuable and indeed indispensable to the protection and maintenance of the true independence and genuine national sovereignty of the United States that has existed since 1776 will perish if the present legal operation of the Connally reservation is nullified and no adequate substitute as a line of defense to our national freedom and autonomy is provided forthwith.

The actual terms of the U.S. declaration of 1946, even when examined apart from the protective language of the Connally reservation clause, reveal and exhibit truly important conflicts both in language and in the underlying purposes, when set side by side with the language of article 36 of the statute of the International Court, that is, the basic or constitutional instrument which was intended by those who drew it up to set forth the organization, powers, and functions of the International Court, and to define its jurisdiction in the sense of definition by a paramount and controlling law. These underlying conflicts should be carefully considered before any change is advocated with respect to the Connally reservation clause itself.

I shall return to this phase of the discussion for a full treatment in the concluding part of my statement.

The Connally reservation clause is the first line of defense for the independence and sovereignty of the United States, as against the International Court as a potential instrument of progressively expanding world government that will frequently in the long ranges of the future, though perhaps not invariably, be controlled by persons who will be definitely alien to the United States by their nationality, by their genuine patriotic allegiance, by their own inherited traditions, and by their most cherished personal ideals.

Why should anyone advocate taking such risks? Why should anyone support the repeal of the Connally reservation clause?

The chief reason of a legal nature, that I have heard advanced, is that the United States by virtue of the Connally amendment, has taken away with the left hand what it gave with the right hand. It is urged that the general declaration of the United States, promulgated by President Truman in 1940, purported to accept the jurisdiction of the International Court according to the terms of the basic statute of that Court, which included the grant of power to that Court to determine its own judicial jurisdiction. It is urged that the Connally reservation clause reserving power to the United States to determine in effect the issues of jurisdiction in a certain wide range of important cases in which the United States might be involved, was in contradiction to the basic statute of the International Court. It has even been suggested that this reservation amounted to making one party before the International Court the judge in its own cause.

In reply to these suggestions, it may be said that the United States has never taken away from the International Court by the left hand, or otherwise, any jurisdiction which it had previously conferred upon the International Court or previously assented to by the right hand, or otherwise. The Connally reservation clause was part and parcel of the original declaration of the United States which recognized the compulsory jurisdiction of the International Court. One part of this declaration could not outrun or antedate any other part in time or in legal effect. The Connally reservation clause was not an amendment, or untimely change, attempted in the original declaration of the United States. It was an integral and controlling part of the original declaration. Much more fitly could this charge of double dealing, or inconsistent and contradictory attitudes, and legal resolutions, be brought against the United States, if the legal advice of some of the proponents of the repeal of the language of the Connally reservation clause were to be followed. For they urge that no great harm could result from such a repeal, because if after such repeal, cases and controversies which the United States was litigating before the International Court should result too unfavorably or too adversely, to our national claims, the United States could thereupon after adequate notice, and suitable maneuvers, withdraw altogether its submission to the International Court's jurisdiction. Such action on the part of the United States would indeed, be an instance of taking away with one hand what we had given with the other, and would subject our country to worldwide reproaches to the effect that the United States was really willing to litigate serious cases in the International Court, and submit faithfully to the determination of that Court, only if, and when, the determination of that Court was favorable to the United States, and constituted a victory for the United States in litigation.

It is far better to have an honest reservation from the very beginning with respect to the jurisdiction of the International Court, a reservation plainly designed to operate as a conspicuous controlling factor at the very threshold of the possible assumption of power or jurisdiction of any kind by the International Court. Resistance or reprisals after experiencing costly or questionable adverse judgments based on the proposed unqualified submission of the United States to the jurisdiction of that court cannot be the true path toward the goals of international peace and stability and good will throughout the world.

Some critics attack the Connally reservation clause in a purely logical sense. They argue that the position of the United States in this field, is one sided and will produce legal inequalities and that thus, the United States is demanding the benefits of unequal and unjust laws. But no unequal treatment of litigants before the International Court need or will result from the operation of the Connally reservations since the basic statute of the Court itself provides or implies that in no case, shall conditions under which the Court shall be open, place the parties in a position of inequality before the Court. See article 35 of the statute of the International Court. But, the really controlling and patriotic

answer to this objection to the operation of the Connally reservation, is that liberty is better than logical symmetry, and that the practical independence and essential sovereignty of the United States must be faithfully preserved as fully as may be humanly possible, whether all other nations strive faithfully to preserve their essential liberties or do not so strive. It was open to other nations also, in the first instance to insist upon self-protective reservations with respect to the compulsory jurisdiction of the International Court.

There are two other important arguments employed by advocates of the repeal of the Connally amendment that ought to be dealt with, however briefly, at this point. The first of these is, that this proposed repeal will be a helpful step toward world peace. The other is, that the proposed repeal will be a helpful step toward the establishment of a fully developed system of world government.

The question as to whether the cancellation of the Connally reservation would be a helpful step toward world peace opens up a number of avenues of speculation. One possible answer to this question would be to ask whether the existence of the Connally reservation has ever in any concrete instance created any threat to peace among the nations? It would seem perfectly clear that a negative reply ought to be forthcoming on that particular inquiry. But more broadly, it can be stated that the whole organization of the United Nations was planned primarily to prevent breaches of peace among the nations and to forestall wars. This description applies to the Security Council, the Secretariat and the General Assembly, as well as the International Court. The United States has already joined the Security Council and the General Assembly without any reservations. But where is the "promised land" of peace?

The United States has at all times, worked faithfully and persistently for the interests of world peace, whenever and wherever it could properly invoke the action of any of the widely publicized international agencies. What has really been wanting has been the effective will for peace on the part of ambitious governments other than those of the United States.

If any critic should assert that this last statement would be a self-serving declaration on the part of the United States, when made by an American citizen, I challenge such critic to allege and prove that the statement is untrue or incorrect.

The desire for territorial acquisitions which extends from China to Panama, and a desire which extends from Indonesia to Egypt will not be altered by a vote in the U.S. Senate in favor of casting away the Connally reservation. The ambition of the new and underdeveloped nations, lacking as they are in capital funds and in resources, and their intense desire to level the inequalities of fortune between themselves and the United States, might even lead to a new phase of the cold war in the form of blackmail claims, and wholly unjustified, but troublesome lawsuits, against the United States, if once the protection of the Connally reservation with regard to the maintenance of actions of all sorts against the United States in the International Court were to be withdrawn. If the United States and any other country have a dispute by which they both desire to have decided by the International Court rather than left to diplomacy, this can always be accomplished by special measures invoking the jurisdiction of the International Court in that particular case. It certainly can be accomplished without establishing once for all a perfectly compulsory jurisdiction of the International Court, a jurisdiction which would apply even when the litigation was most provocative and vexatious, and when the just conclusion that only the truly domestic interest of the United States were under attack, would be obvious to well-informed public opinion in the United States from the outset. But how few countries in the world beside our own, possess a regime where a well-informed public opinion exists, or where such a public opinion could make its influence effectively felt to restrain a rapacious government such as that of Mussolini in Italy or that of Nasser in Egypt, or that of Castro in Cuba today? And to nations under strict censorship the justice of the U.S. position in any such international litigation could never be publicized at all, much less proved fairly and effectively, without the previous consent and full authorization of the censors.

But perhaps the main point in this section of the discussion is that the great actual danger to world peace ever since 1945 has been, and still remains, the ideological conflict between the free world and the world of the Communists. Can the jurisdiction of the International Court ever be effective to remove this conflict or pacify the emotions that lie behind it? The answer seems obvious.

The great conflicts of history from the years of the ancient empires of Baby-

lonia and Egypt down to the days of Hitler and Mussolini have never been conflicts that could have been settled or forestalled by judicial rulings. But also, in the present situation, we have to weigh and consider the factor that one group of nations led by Soviet Russia and Communist China have nothing to do with international judicial processes in any form. In dealing with these wholly untamed and ruthless nations, the United States, as the leader of the free world, must needs preserve its full freedom of action, and must never lose sight, through the illusions of pacifism, of its supreme duty of retaining its resources and power intact, for the worldwide struggle that is, this very day, as it has been continuously for many years, in intense progression between the two great ideological groups. The hostile propaganda that could be let loose against the United States by actions at law in the International Court based on all sorts of defamatory allegations against the United States that would be repeatedly trumpeted around the world, certainly could and probably would constitute a new and more dangerous phase of the cold war. The newspaper headlines all around the world including our own country from Key West, Fla., to Point Barrow, Alaska, would blazon forth all the charges and arguments against the United States, however palpably unreasonable they might be; while the merits of our side in the litigation would never be set forth effectively and perhaps would not even be mentioned in more than half the world that is in the controlled press which is such a conspicuous feature not only in the national life of Soviet Russia and that of Communist China, but also in that of many other nations all around the globe. In other words, the exercise of the unrestricted compulsory jurisdiction of the International Court might well prove to be a new and most powerful means of waging the cold war against the United States. Public opinion in our own country might be painfully divided between the schools of firm resistance, and the schools of ever expanding and ever recurring appeasement. And the attention of our Nation might be diverted with the most evil consequences from that great task of maintaining our military preparedness and our internal industrial and financial strength which is for the present and for all of the foreseeable future the supreme and in one sense the exclusive duty of the United States.

For example, suppose that the tiny Republic of Panama, which could never threaten us militarily, should bring a proceeding to International Court, demanding the transfer of the Panama Canal from the control of the United States States to that of Panama. Under the protection of the Connally reservation clause, the United States could defeat at the outset any claim of color of jurisdiction in the International Court in such a case merely by asserting our own governmental decision that this matter, in regard to which the legal dispute had been started, rested essentially within the domestic jurisdiction of the United States. This action would torpedo such a fantastic claim of Panama before this particular ship of cold war aggression, nominally of Panamanian registry, but actually directed, financed, and publicized by the Communist nations could ever emerge from the harbors of Panama and reach the broad oceans of tempestuous and long continued cold war publicity. If such a situation developed, would not the United States have good cause for bitter regret that it had become embroiled in such a highly publicized governmental dispute, in which public opinion all over the world might be really poisoned against us, whatever the ultimate official decision of the long drawn out and declamatory litigation might prove to be?

It is even possible that in such a case, the International Court, having unlimited jurisdiction both for final decision and for conservation and control of disputed assets and properties during litigation might establish some sort of "international receivership" of the Panama Canal during such a portentous lawsuit and thus exclude the United States from effective control of that great inter-oceanic highway for any military purpose throughout some specially critical period that might coincide with the duration of such a receivership. The United States could be robbed of a part, perhaps a vital part of its naval and military power during the whole of the unpredictable length of such international occupancy and control of all the installations and facilities now used and operated by the United States in the Panama Canal Zone.

Would the United States submit to any such interferences with its military safety even under the guise of international authority? Would unrestricted submission to international and perhaps wholly alien authority in such a situation be the road to real world peace? Is it not more probable that any such exposure of weakness and self distrust on our part would actually invite military attack against the United States by one of the great hostile powers, Soviet

Russia, in the immediate present or perhaps Communist China in the not too far distant future?

It seems to me that there can be but one answer to each of these questions. Nor is the instance of a "strike law suit" of this sort by Panama the only instance that could be fairly suggested of such alarming possibilities that would be ruinous to our national safety and welfare if they became actualities.

Why should we risk their being transformed into actualities by the malice of our avowed enemies or by the greed of envious nations not yet committed to communism, when we have now in our possession a completely effective weapon of defense in this phase of the cold war, a phase that we might describe as "knifefighting Controversies Under the Sword of Suspended Violence"? It is hard to understand how any American patriot can bring himself to declare that such potentially ruinous risks should be assumed by the United States when these risks can be so easily avoided by merely preserving the protective principle of the Connally reservation clause which we now have in force, and which we do not therefore have to acquire by some difficult process of negotiation or fantastic high exchange price in the bargain market of international favors.

The other chief argument of the proponents of the repeal of the Connally reservation clause is that we should accept the ideal of world government as the great goal for the future, and should recognize with rejoicing that the cancellation of the Connally reservation clause will be a good thing indeed because it will be a long stride, a substantial advance toward establishing world government.

I disagree with the basic popular premise or logical "major premise" of this argument. I do not believe that we can safely advance toward actual world government in these days of the great ideological conflict between the free world and the world of communism without incurring the risk of being engulfed. The two chief Communist powers, Soviet Russia and Communist China, already embrace much more than one-third of the world's total population. The huge population of India seems, at present, very seriously exposed to Communist seizure. The danger in this vital area comes from both Soviet Russia and from Communist China. India is relatively weak in a military sense, and would need the assistance of the entire free world in order to make her resistance against these great Communist powers successful. But the more realistic danger at present, perhaps, is that which exists in India from gradual Communist infiltration in a vast, poverty stricken population, whose strong insistence on Asiatic nationalism to some extent blinds them to the false pretenses of Communist propaganda. The same general observations are applicable to Burma, Indonesia, and Vietnam. The point I now want to stress is simply that if these neutralist nations in southern Asia were added to the already existing Communist bloc, the Communist power would have encompassed more than half of the world's population, even if we deny to the Communists, for the purposes of any argument any accessions of power in the Africa Continent, or in the Arab spheres in Asia.

Could we tolerate an effectively organized world government under such conditions? Our own great democratic principle of majority rule could be effectively used against us, we would ultimately be ruled in all situations by this massive Communist majority. No attempted reservations of national rights would be secure.

The only safety for the United States in the present world situation is first to maintain our own great homeland as a citadel of freedom, intact from alien control, and second to maintain the United Nations in its specialized role as an instrument for maintaining the actual condition peace, from day to day, and from month to month for that very purpose assuming the difficult function of forestalling and resisting armed aggression by any nation in the world, large or small.

This specialized role of the United Nations is of preeminent importance. But in a real sense this justifiable preoccupation with the cause of peace leaves the United Nations organization with little time and energy for improvised essays in world government. The United Nations, as the only actual genuinely international organization with worldwide membership and worldwide interests is *prima facie* well fitted for its primary task of war prevention. But on account of the looseness of its organization and the incredible complexity of this absorbing specialized task, the United Nations is not fitted for the still broader and still more complex functions of world government.

But an even greater objection to world government in any generalized sense, is the existence of intense nationalistic sentiment among all the peoples of the earth and predominantly nationalistic governmental policy all around the globe. If a comprehensive plan for a genuine world government were at this time, submitted to the nations of the world there can be little doubt that it would be rejected almost unanimously.

But what could not be established by popular votes or the conscious approval of nationally minded political statesmen might be approached in a less obvious way by the action of the judicial power of the International Court, as an organ of the United Nations. The International Court is in principle or in "embryo," a very powerful organ of world government.

The potentialities of the supreme judicial power in a system of Federal government have been fully demonstrated by the history of the Federal judicial power in the United States. This history is well known to all members of this honorable committee and need not be rehearsed here.

But the great difference between the two historic pictures is that in the early history of the United States the great mass of the people as well as the wisest and best instructed leaders ardently desired to form a National Government with very wide powers. In both the Articles of Confederation and the Constitution of 1787—now by far the oldest national constitution in force anywhere in the world—a long list of legislative powers was expressly granted to the National Government. In the constitution of 1787, a strong national Executive power was established and likewise, a national judiciary with a long list of expressly stated fields of jurisdiction and authority was definitely planned and authorized.

This judicial power of the United States has had a portentous growth and development. But this growth has always been along the general lines that the founders of the Government had consciously planned for it. Therefore, it may be said that the growth of the Federal judicial power in the United States, in a practical sense, has constituted one of the great factors in the development of true national unity in the United States, which was from the beginning the chief ideal of both the leaders and the great majority of the plain people of our country. It was a very helpful means toward a universally desired end.

But this analogy from the early history of the United States falls utterly when applied to the present world situation. For today neither the leaders in any important country, nor the mass of the plain people desire to establish world government. That imaginary consummation is not desired anywhere at present, as a practical goal or objective for our times. Therefore, factors in public life or institutions like the International Court can derive no real, logical or moral support from the argument that they will militate in favor of world government. For the declared end or objective "World Government" is not now desired, and is viewed by most persons both as wholly impracticable and also as bearing within it the gravest dangers to our liberties, civil, religious, and economic, along with risks indeed for our whole civilization. An institution of worldwide potential authority can therefore claim little support at the present time, on the ground that it is a helpful step toward the establishment of world government, because the end or goal toward which that institution is said to be functioning is not a goal which most thinking people can choose, or even tolerate when it is presented to them by extremist writers.

It is often remarked that the somewhat dubious practical ideal of "efficiency" may lead to bad and harmful results when efficiency is displayed in the pursuit of an evil or ill-chosen end or objective. The word "efficiency" has an alluring appeal, yet efficiency directed toward the wrong objectives may be disastrous.

Similarly the designation of the important agency or part of the United Nations organization that we have been discussing "The International Court" has an attractive sound. Both the word "Court" as commonly understood by Americans, and the word "International" have many comfortable and reassuring connotations. But if it be argued that the jurisdiction of the International Court is a good thing because it will prove a helpful means toward the establishment of world government, the attractiveness of the designation is shown to be spurious and misleading, since the "efficiency" of such an institution will operate to bring us ever closer to a politically unacceptable and really disastrous end, that is fully developed world government.

The merits of the International Court, if any exist, have got to be demonstrated to the American public on some other basis than the argument that the

activities of the International Court will lead us with siren singing toward a world concentration of political and governmental power, and will help to engulf the United States therein. Since the end of goal of such a development is evil, and seems evil to most thoughtful people, the instrument that will bring us speedily and efficiently to that same end, must be evil also.

The Connally reservation clause deals with the method to be employed in determining whether any dispute brought before the International Court is a dispute with regard to matters which are essentially within the domestic jurisdiction of the United States of America, or whether that dispute in a legal sense, does not fall within that classification. There is in all the discussions about the Connally reservation clause, a vaguely conceived and ill-defined major premise, namely, that legal disputes that are in truth essentially within the domestic jurisdictions of the United States, do not legally fall within the compulsory jurisdiction of the International Court. Many students of the Charter of the United Nations are satisfied that this major premise finds authoritative and indeed, constitutional expression in generalized terms in article 2, chapter I, paragraph 7 of the charter which reads as follows:

"Nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such matters to settlement under the present charter; but this principle shall not prejudice the application of enforcement measures under chapter VII."

There are some genuine and rather stubborn legal difficulties that render doubtful the application of this generalized language in article 2 of chapter I of the United Nations Charter, to the whole range of the decisions of the International Court of Justice. For one thing, the potential activities and decisions of the International Court with regard to defining these matters that are essentially within the domestic jurisdiction of any state, are nowhere expressly mentioned in this clause. Then too, the key proposition—"Nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state," does not appear to be very apt or appropriate language for limiting the judicial jurisdiction of the International Court of Justice in legal and controversial cases where the basic jurisdiction of that Court has been assented to by the parties. The word "intervene" has long had a special connotation in international law that would hardly include the rendering of a judicial decision by a legally authorized international court.

Then again the expression in the article under discussion "Nothing shall require the members to submit such matters to settlement under the present charter" does not seem to deal with the legal situation and obligations of states which have accepted the compulsory jurisdiction of the International Court of Justice by a separate binding declaration independent of and subsequent to their becoming members of the United Nations. There are still very important members of the United Nations which have never accepted the compulsory jurisdiction of the International Court at all.

Whatever may be the ultimate legal merit of these objections to constructing basic or constitutional limitations on the exercise of jurisdiction by the International Court of Justice, by the means of drawing controlling inferences from the generalized language of article 2 of chapter I of the charter itself as just quoted, it seems perfectly plain that the U.S. Senate was not willing to rely on such inferences alone, to be taken from the generalized provisions of the United Nations Charter. But when confronted with the problem of drawing up a Senate resolution to express the "advice and consent" of the Senate to the acceptance by the United States of the compulsory jurisdiction of the International Court, the Senate committee on foreign affairs included as an integral part of its actions in this field a basic reservation in the following language: "Provided, That this declaration shall not apply to—

"(b) Disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America."

To this initial draft at the end thereof was added by appropriate Senate action the language of the Connally reservation clause to wit "as determined by the United States of America," the whole of this language being thus welded together as a single clause set off by semicolons both at the beginning and at the end thereof, but embedded as an integral and inseparable and truly essential part of the single lengthy sentence which constitutes the whole of the

"United States Declaration Recognizing The Compulsory Jurisdiction Of The International Court Of Justice."

Now behind the shelter of this carefully drawn reservation the United States has, since 1940, enjoyed substantial protection from the jurisdiction and control of the International Court over matters which the Government of the United States has believed to be matters of domestic jurisdiction within the United States itself. The value of this protection has been in its potential reach and effectiveness which have precluded any serious intrusions of international authority, or the authority of other nations into our domestic affairs, rather than in the significance of the particular instances (extremely few in number) in which the United States has actually exercised its power under this reservation to determine finally that a dispute staged as an international dispute was actually a dispute with regard to matters within the domestic jurisdiction of the United States.

Some enologists of the United Nations and of the International Court have maintained that this protection is altogether too substantial.

But ought we to abandon this bulwark of the security of our truly domestic and internal affairs in the United States and their immunity from international interference without first obtaining an explicit and authoritative agreement as to just what ought to be and shall be included within this difficult concept of domestic jurisdiction? The task seems essentially a legislative task and calls for an amendment to the Statute of the International Court, or a broad amendment generally applicable to all the activities of the United Nations. If such an amendment could not win adoption, this would demonstrate that the United States would be playing with fire and further demonstrate that we ought not to contemplate the withdrawal or cancellation of the Connally reservation clause.

I now want to bring out and stress the point that even without the particular language of the Connally reservation, the general language of the U.S. declaration, as promulgated by President Truman, and deposited with the Secretary General of the United Nations on August 26, 1940 contained very significant variations from the relevant language of the Statute of the International Court of Justice as set forth in article 36 thereof. How are these variations to be reconciled? Will the intended meaning of the U.S. declaration be preserved at all if any part of the protective mechanism established by the Connally reservation, were to be abolished? It is all important that the United States preserve the authority to decide the true interpretation of its own reservations as expressed in the U.S. declaration. Otherwise, the intent of that declaration as a whole, may be nullified, because of contrasting and contradictory language in the Statute of the International Court.

Let me attempt to explain this matter in more detail. I ask your patient attention as this part of the argument is wholly legalistic.

This crucial article 36 recites in paragraph 2 thereof: "The states parties to the present statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

"(a) The interpretation of a treaty.

"(b) Any question of international law.

"(c) The existence of any fact which, if established, would constitute a breach of an international obligation.

"(d) The nature or extent of the reparation to be made for the breach of an international obligation."

Now, we all know that great legal disputes that are brought before the highest tribunals and earnestly litigated, are very likely to present not merely one but several legal issues, each of which is potentially decisive of the cause. Some of these issues are such that the decision of any one of them, one way or the other, will swing the decision of the whole case, one way or the other. And likewise, there may be, in a complicated case, two or three, or more, great issues of fact, each of which is potentially decisive of the whole legal controversy in this same sense. That is, the decision of any one of these great issues of fact may throw the ultimate decision of the whole controversy in favor of one litigating party A or in favor of the other litigating party B.

Now the actual language of article 36 of the basic statute of the International Court, just quoted, appears to grant jurisdiction to the World Court in any legal dispute in which any one of these potentially decisive issues is within the designations expressly set forth for the jurisdiction of that Court, such as (a) the interpretation of a treaty or (b) the presence of any question of interna-

tional law as an element of the dispute. The presence in the case or "legal dispute," viewed as a whole of any one of these specified elements of international concern, will lift the entire dispute into the jurisdiction of the International Court, unless justice is to be administered here in a piecemeal and fragmentary manner.

The exact language of the statute of the International Court above quoted that seems to be controlling is:

"In all legal disputes concerning:

"(a) The interpretation of a treaty.

"(b) Any question of international law * * *

and so forth.

Now it seems clear that a legal dispute may be one "concerning"; that is, it may concern the interpretation of a treaty or some question of international law while at the same time the case or legal dispute, as a whole, may also "concern" other distinct legal issues that are potentially decisive of the whole dispute. Some of these other legal issues may well happen to be legal issues that would, if taken alone, appear to be domestic issues, not falling within any of the classes expressly assigned to the jurisdiction of the International Court by the terms of the basic statute. How can the International Court avoid deciding these domestic legal issues, if it is to take jurisdiction in all legal disputes "concerning" the interpretation of a treaty or any question of international law when these latter issues are interwoven in the tapestry of the case with the legal issues that we would characterize as domestic, if we were able to consider and evaluate them separately and in isolation?

One set of issues or the other must be taken to give the dominant coloring to the legal controversy as a whole, unless the International Court is to administer only piecemeal and fragmentary justice in such cases. The result would probably be that the World Court under the terms of its basic statute would assume jurisdiction over all the domestic issues in any legal dispute where there was a single potentially decisive issue of international law or the interpretation of treaties or as to the existence of any fact which if established would constitute a breach of an international obligation.

This result that I have ventured to describe as "probable," would be strongly supported by the analogy of our own constitutional doctrine in the United States, as to the jurisdiction of the courts of the United States in any case where a single Federal question is present. That is, any one legal question or issue arising under the Constitution, treaties, or the statutes of the United States is sufficient to establish complete Federal judicial jurisdiction even though there are present in the controversy and legally involved in the decision thereof other legal issues that are non-Federal; that is, issues whose decision depends on local domestic law in the several States of the Union that may bear an appropriate relation to the controversy under discussion. These issues of local or domestic law must and will be decided by the Federal court that has the appropriate jurisdiction over the case as a whole, because of the distinctive Federal issue that also is present in the controversy viewed as a whole, and which is essential or a potentially decisive question in such cases.

This doctrine was stated in admirable language by Chief Justice Marshall when rendering the opinion and judgment of the U.S. Supreme Court in the case of *Osborn v. United States Bank*, 9 Wheaton 738, decided in February 1924. Chief Justice Marshall says: "A cause may depend on several questions of fact and law. Some of these may depend on the construction of a law of the United States; others on principles unconnected with that law. If it be a sufficient foundation for jurisdiction that the title or right set up by the party may be defeated by one construction of the Constitution or law of the United States, and sustained by the opposite construction, provided the facts necessary to support the action be made out, then all the other questions must be decided as incidental to this, which gives that jurisdiction. Those other questions cannot arrest the proceedings. Under this construction the judicial power of the Union extends effectively and beneficially to that most important class of cases, which depend on the character of the cause. On the opposite construction the judicial power never can be extended to a whole case, as expressed by the Constitution, but to those parts of cases only which present the particular question involving the construction of the Constitution or the law."

"We think then that when a question to which the judicial power of the Union is extended by the Constitution forms an ingredient of the original cause, it is

in the power of Congress to give the circuit courts jurisdiction of that cause, although other questions of fact or of law may be involved in it" (*Osborn v. Bank*; quotation is at p. 822 of *O Wheaton*).

So the most natural construction, and as I believe, the legally correct construction, of the grant of jurisdiction to the International Court of Justice, as set forth in article 36 of the basic statute creating that Court, is that this jurisdiction is legally available and compulsory upon all States recognizing the basic jurisdiction whenever a legal dispute between two nations is presented that concerns—that is, involves—as potentially decisive issues in any such dispute any one or more of the great issues specifically enumerated in article 36, to wit: First, the interpretation of a treaty; second, any question of international law; third, the existence of any fact, which, if established, would constitute a breach of any international obligation; and fourth, the nature or extent of the reparation to be made for the breach of any international obligation.

These are the great Federal questions that will be presented under the new regime of the International Court. More precisely, these are the designations of the great classes of legal issues or legal questions which will suffice to establish the basic jurisdiction of the Court of International Justice in any legal dispute in which such legal issues or legal questions are involved as potentially decisive factors. But when once the basic jurisdiction of the International Court is then established in any particular legal dispute, the jurisdiction will extend to, and fully embrace, all the other issues of law and questions of fact that may be logically or practically involved in that general dispute, whether in any sense they are domestic issues or questions, or are not domestic issues or questions.

But in sharp and conspicuous contrast to this interpretation of the basic statute of the International Court of Justice, the declaration of the United States in acceding to the jurisdiction of that Court, as promulgated by President Truman, provides expressly that this declaration shall not apply "to disputes with regard to matters which are essentially within the jurisdiction of the United States of America, as determined by the United States of America."

If the last eight words of this important proviso, namely, the Connally amendment, were to be eliminated, it would still be true that the proviso as was formulated before the Connally amendment speaks of "disputes," that is apparently the whole of each dispute, as contrasted with particular issues of fact or law arising wherein, however important. Then the U.S. declaration speaks in a somewhat broad and comprehensive phrase of "disputes with regard to matters that are essentially within the domestic jurisdiction of the United States of America."

The central concept here is that "certain matters," not particular legal issues, or questions, but certain matters are outside the declaration of acceptance and recognition by the United States of the International Court's basic jurisdiction. The term "matter" in this connection seems plainly broader than the term "question" used in article 36 of the basic statute of the International Court as in the phrase "any question of international law" in the clause wherein which defines the International Court's jurisdiction.

The legal question grows out of the legal matter, but is not coextensive with it. The legal matter may, and generally does, embrace more than one legal question. Further, the legal matter embraces issues and questions which would not be seen potentially decisive of the whole legal dispute. But it is this entire legal matter, this broadly conceived subject matter, that our U.S. declaration purports to reserve outside of the definition of the jurisdiction of the International Court that the United States agrees to.

Then the word "essentially" in the vital phrase "essentially within the domestic jurisdiction" seems to widen the scope of the reservation. For this means that even though the matters in dispute are not completely within the domestic jurisdiction, or not within the domestic jurisdiction from every standpoint, it still is sufficient to exclude the jurisdiction of the International Court that these matters are essentially within the domestic jurisdiction.

The core or center or soul of the matter may be domestic even though some, or many, nonessential aspects or accessory parts of the "matters" in legal dispute were admitted to be nondomestic, so that altogether the reservation in the U.S. declaration with regard to the jurisdiction of the International Court is much broader than might appear at first. And this, the intended and true meaning of the reservation, is inconsistent, really, with the primary and natural meaning of article 36 of the basic statute of the International Court.

The statute of the International Court makes the jurisdiction of the International Court over any legal contest depend exclusively upon the presence of certain defined issues or questions that may be found to be involved as potentially decisive elements in those contents. The U.S. declaration limits the jurisdiction of the International Court so far as the United States is concerned by excluding entirely from the permissible jurisdiction whole disputes that may exist in regard to certain extensive "matters" or subject matters.

The whole range of the dispute and the whole extent of the subject matter of the dispute is excluded from the International Court's jurisdiction so far as the United States is concerned, provided only that these "matters" or subject matters of dispute are "essentially" within the domestic jurisdiction. "These matters" do not have to be within the domestic jurisdiction altogether, nor do they have to be within the domestic jurisdiction from every standpoint. It is enough to exclude the jurisdiction of the International Court entirely, so far as the United States is concerned, if the "matters" or subject matters with regard to which a broad level dispute has arisen between two or more nations are in truth "essentially within the domestic jurisdiction"; however that conception of domestic jurisdiction is thereafter to be defined.

Now, the final conclusion that I wish to enforce on this last branch of the discussion is that without its protection of the Connally reservation clause, the whole effect of this U.S. reservation which is designed to cover the entirety of an essentially domestic dispute will be lost. For the jurisdiction of the International Court will not be displaced with regard to the whole or any part of any dispute, including the admittedly "domestic" issues, so long as there is a single issue of law or fact that comes within the terms of article 36.

The Connally reservation clause certainly ought not to be withdrawn or modified unless the basic statute of the Court is so amended as to announce and require explicitly and unequivocally the exclusion of the entire legal dispute with regard to any "matters" within the domestic jurisdiction of any State or nation from out the scope of the compulsory jurisdiction of the International Court of Justice, even though there may be particular legal "questions" such as questions of international law or questions of treaty interpretation that are involved as "ingredience" in such broad disputes.

I do not believe that the generalized and indefinite statement in chapter I, article 2, paragraph 7 of the Charter of the United Nations is sufficient to exclude the jurisdiction of the International Court with regard to such "matters." The controlling phrase in that provision of the charter just referred to is:

"Nothing contained in the present charter shall authorize the United Nations to *intervene* in matters which are essentially within the domestic jurisdiction of any state." [Italics added.]

But this provision is not made expressly or effectively to judgments or orders of the International Court in relation to any matters within the compulsory jurisdiction of that Court. The general intentment of the quoted provision plainly shows that it was intended to apply to check discretionary action of the Security Council of the United Nations in relation to any member state whatsoever of the United Nations irrespective of whether or not that member state had accepted the compulsory jurisdiction of the International Court.

This provision placed in a wholly different context in the charter from the sections devoted to the International Court cannot be relied upon as a legal or "constitutional" limitation on the powers of the International Court of Justice in cases before it in which that Court has complete compulsory jurisdiction.

The language of the U.S. declaration, quite apart from the terms of the Connally reservation clause, is definitely in conflict with the language of the basic statute of the Court. In all probability if it were not for the Connally reservation clause the language of the basic statute of the Court would be held by the Court to be controlling legally and "constitutionally" as against the repugnant language of a particular nation's passive reservation stipulations, in any legal situation where the International Court itself had full and final power to decide and determine finally all legal issues with regard to its own jurisdiction.

The Connally reservation clause at present deprives the International Court of any such final and conclusive power to decide all the legal issues as to the scope and reach of its own jurisdiction when the conflict with "domestic jurisdiction" is argumentatively and colorably involved. But without the Connally reservation clause the Court itself will have the final jurisdiction and final power to construe out of existence any other reservations which the United States has attempted to make. This is the crucial point of the whole argument.

STATEMENT OF DORIS B. PARKER, GLEN ROOK, N.J.

Honorable Senators Humphrey, Green, and all Senate Members, as an individual citizen and American housewife, Doris B. Parker, I should like to enter into the record, in this 10-day extension period generously granted by the Foreign Relations Committee of the U.S. Senate, following the public hearing on February 17, 1960, in reference to Senate Resolution No. 94, known as the Connally reservation, a humble appeal to take no action on the controversial resolution, or one similar in content which may crop up in the House.

An apparent war of ideas must be settled right on the home front. The misuse of the word "justice" in certain press, the source of information for many who voice opinions at hearings, is a striking example of a need to open all congressional hearings with a pledge of loyalty to the United States of America, whom you Senators represent, and a prayer in recognition of power that comes from the supreme lawgiver, God, whose united servants we all strive to be.

There is no such thing as "International justice," a term which appears again and again in certain newspapers supporting world government and an all-powerful world tribunal. The very lifeblood of our Government is undermined when the label "International" is affixed to "justice." Justice is the principle of just dealing of men with each other; and principle is a fundamental truth. America has always been dedicated to the principle of "liberty and justice for all." That principle of "one nation, under God, indivisible" might become more firmly fixed in the minds and hearts of aliens if you patriotic Senators would consider first our national security, and order public hearings opened with a loyalty pledge to our constitutional form of government, which has its deep roots in the principle of justice and a just God over all.

I was shocked by the claims of an assistant professor of law from a once traditionally American university, who had been invited to speak before your committee on February 17, in support of Senate Resolution 94. The opponents of the bill, claimed Stephen M. Schwab, are characterized by a common bond: "the habitual confusion of nationalism and patriotism." The confusion, however, is not as easily treated as a mere rejection of opposing writers, who practice a sound philosophy that the "pen is mightier than the sword." The treatment is not as automatic as wrapping up for the freezer the wholesale collectivism of the agreeing professors and the practitioners. Just who are "the practitioners"?

Freedom loving and practicing people, including our President in these United States, trust in God, whose servants we are. Communists, on the other hand, subscribe to an atheistic philosophy and tyrannical rule. A deep-seated conflict between freedom and communism exists, as between principle and lack of principle. For a God-loving and God-fearing nation to want to be judged in a fathomed world tribunal by agents of communism can only lead to the fall of civilization.

As a means of putting better safeguards on our national security I ask for a reexamination of deep-seated threats to our Nation "under God," such as the danger of deleting the Connally amendment in Senate Resolution 94. These dangers seemed to me best brought out in the hearing on February 17, by Dean Clarence Manion and Myra C. Hacker. Retiring Senator Green, of my native State, who alone questioned Mrs. Hacker late in the day, brought home a religious note, in concluding that perhaps we will meet in heaven.

I ask that all congressional hearings in the future be opened with a pledge of allegiance to the flag of the United States of America, and a prayer.

STATEMENT OF THE AMERICAN CIVIL LIBERTIES UNION, NEW YORK, N.Y., FEBRUARY 24, 1960

The purpose of this statement is to inform the Committee on Foreign Relations of the support of the American Civil Liberties Union for Senate Resolution 94 which would withdraw the reservation of the United States on its declaration of adherence to the statute of the International Court of Justice. In addition to the generally objectionable features of this reservation, its continuance in effect may well limit the protection that the United States may afford to its nationals and their interests in other nations.

While it may be doubtful that the United States would ever apply the reservation to the extent that its words permit, nevertheless, the possibility exists that by making a unilateral determination that the subject matter of a dispute is

"essentially within the domestic jurisdiction," the United States may exert a virtual veto with respect to the jurisdiction of the International Court of Justice over it. Whether or not it is so applied, the appearance of the opportunity places the United States in an ambiguous position in the world community when its governmental leaders advocate the resolution of international disputes by adherence to the rule of law.

Of more significance is the fact that the reservation has had a contagious effect on other nations. At least five other nations have expressly conditioned their adherence to the Court's jurisdiction by declarations similar to that of the United States. Furthermore, under international law, the reservation is interpreted so as to have a reciprocal effect with the result that it may be invoked against the United States by any nation against which it might bring proceedings in the International Court of Justice.

It is this reciprocal effect that raises problems of particular concern to the American Civil Liberties Union. The post World War II period has witnessed a great acceleration both in the presence of American citizens in foreign countries and in the volume of their foreign economic interests. These are highly desirable trends and should be encouraged in the national interests of the United States. However, such trends do raise the problem of the United States affording adequate protection, under international law, for its nationals and their property located abroad. Proceedings brought by the United States in the International Court of Justice on behalf of its nationals would provide an appropriate forum for such protection. If, however, the United States retains the reservation, a nation against which it may bring a proceeding for violation of a treaty obligation or for a denial of justice would be in a position to declare, by unilateral decision, that the subject matter was essentially within its domestic jurisdiction and, therefore, not for consideration by the International Court of Justice. Hence, the reservation, through its reciprocal application against the United States, introduces an unnecessary element of uncertainty of remedy for violations of international law.

Both the cases of treaty violation and denial of justice are easily illustrated by example. First, as to violation of treaty provisions relating to the rights of Americans in foreign countries. In a recent series of cases, the Supreme Court of the United States has held that civilian dependents accompanying American servicemen abroad and civilian employees of the Armed Forces abroad are not subject to trial by military courts of the United States. Consequently, under the North Atlantic Treaty Organization Status of Forces Agreement, the local courts of the foreign nations will have jurisdiction to try such personnel. The status of forces agreements provide that trials of personnel of the United States present in the receiving nations shall be conducted according to certain procedural safeguards. In the event that the United States claimed such safeguards were not provided in a particular trial, it might wish to have the International Court of Justice consider the matter. The presence of the reservation would permit the nation against which proceedings were brought to have the matter dismissed upon its own decision as being within its domestic jurisdiction.

In the absence of a treaty, the United States may wish the International Court to consider a case of a denial of justice, under international law, to an American national. Any nation against which such charges might be filed, in the face of the reservation, could have the proceeding dismissed as being within its domestic jurisdiction, irrespective of its clear violation of international law and minimum standards of justice and fairness.

What has been said in regard to the protection of American nationals abroad applies equally to the protection of their property rights and interests.

While withdrawal of the reservation is more than justified as a means of stimulating the general development of international law by increasing the questions that can effectively be brought before the International Court of Justice for decision, the United States has a special interest in its withdrawal, so that it can afford Americans increased protection in foreign countries by having the opportunity of invoking the jurisdiction of that Court in their behalf.

ERNEST ANGELL,

Chairman, Board of Directors, American Civil Liberties Union.

Prof. CECIL J. OLMSTEAD,

New York University Law School.

WASHINGTON, D.C., February 24, 1960.

Re testimony for record of hearings on Senate Resolution 94.

The Honorable J. WILLIAM FULBRIGHT,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I had the opportunity to be present at the hearings of your committee on January 27 and on February 17, 1960, pertaining to Senate Resolution 94 and the repeal of the self-judging reservation on U.S. adherence to the International Court of Justice.

On several occasions witnesses opposing repeal indicated that the position of Vice President Richard M. Nixon was not clear and that he had never actually said that he supported the repeal of the self-judging reservation. Believing it of importance to clarify this matter, I have obtained from the Vice President's office the enclosed statement which he made at the University of Florida on January 15, 1960. I respectfully request that this statement be included in the printed record of your committee's hearings, if it has not already been.

As a veteran of our Navy's amphibious forces in the Pacific during World War II, one who saw Hiroshima about 4 months after the atomic bomb, and one who firmly believes that legal procedures must be developed to settle disputes between nations in order to afford an international shield to protect national security, I add my voice to those who firmly favor repeal of this harmful reservation.

Respectfully,

SANDFORD Z. PERSONS.

[Excerpted from responses by Vice President Richard Nixon to questions by a student-faculty panel, University of Florida, Gainesville, Jan. 15, 1960]

THE CONNALLY AMENDMENT AND THE COURT OF INTERNATIONAL JUSTICE

Question. The President in his state of the Union message to the Congress very recently indicated that the administration will specifically support a Senate resolution to repeal the so-called Connally amendment of 1946. Do you concur with President Eisenhower's position?

Vice President Nixon. In my opinion, we have to realize that in the long-run, we must find a better answer to whether we're going to have peace or the balance of terror we have today.

What keeps the Russians or any other potential aggressor from attacking us or, for example, keeps any other nation from using war as an instrument of national policy, is the fact that anyone in his right mind knows that war does not pay any more. No one can win a world war. Despite what Mr. Khrushchev says about his awesome weapons, he knows as we know that he does not have, and I will say further he will not acquire in the foreseeable future, the power, regardless of what kind of an attack is launched, to knock out the deterrent power that we have. In other words, the situation is such now that both sides are deterred from engaging in war because of the fear of what might happen to their own homeland.

What are we going to do as we look ahead to weapons which are going to get infinitely worse and more terrible in their consequences than even those we presently have? What are we going to do to meet the situation not only in the 1960's, but in the 1970's or the 1980's? Are we going to leave this terrible fear hanging over the world?

Some say the answer is disarmament. We should not be naïve about that. We will, of course, make efforts to engage in disarmament with proper inspection. But anybody who analyzes the situation and all of the forces that are involved knows that it is going to take a considerable length of time. There isn't going to be any great "summit conference" that magically will abolish war and the terrible destructive weapons of war.

We must have something other than the balance of terror or the rule of terror. The only alternative to force that I can think of—and I believe this is the case with others who are observers of the international field—is the rule of law.

The rule of law means that there must be some body to which both sides will submit their differences. I do not go along with those who suggest that what we must do is to set up some superworld body, other than those that we presently have, to which all parties concerned will submit their interests as well as

the differences or other items which might be in dispute. This is not an attainable objective considering the present state of affairs in the world.

But I do suggest that we cannot expect some magic agreement to be developed overnight in which we will substitute the rule of law for the rule of force. Men who are thinking intelligently and constructively in this field, have to offer some means to make progress toward this end, the repeal of the Connally amendment is a small step, but an important step in that direction. People ask, "Are you going to suggest that the United States should submit questions to the World Court which might be purely domestic in character?" I know many of the critics say, "What about immigration, for example, and what about purely domestic matters that should be decided by the Congress of the United States and not by some World Court?" My answer is, "There is no danger insofar as items of this nature are concerned." The Court's jurisdiction is limited to international matters only. I believe that so long as the United States insists on a reservation in which we say, in effect, "We will not submit anything to that Court unless we, ourselves, determine in each individual case whether we want to," the International Court is never going to amount to anything.

I say that if the United States, which believes in the rule of law between individuals, does not take the lead with our firm beliefs and with our strength, in submitting our differences with other countries, to the World Court, we can't expect other countries to do so. So I think that this would be a helpful step. In view of the terrible alternative with which we are faced, I think it is the only constructive action that the Senate of the United States should take under the circumstances.

U.S. SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
February 25, 1960.

HON. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I would appreciate it if you would permit the attached editorials from Pennsylvania newspapers supporting the Humphrey resolution (S. Res. 94), to repeal the Connally amendment, to be inserted in the committee record of proceedings on the resolution.

Thank you.

Sincerely,

JOSEPH S. CLARK.

[From the Harrisburg Evening News, Feb. 4, 1960]

UNSHACKLE THE WORLD COURT

A THOUGHT

Now he that planteth and he that watereth are one: and every man shall receive his own reward according to his own labor.
Corinthians 3: 8.

The United States soon will have a dramatic chance to prove before the world that it means what it says.

The chance will come about when the Senate considers repeal of the so-called Connally amendment.

This amendment has reduced America's oft-repeated support of the principle of international law to a farce.

It is time to scrap it.

The United States, time and again, has espoused the importance of the International Court of Justice in Geneva. The Court was established, along with the United Nations, in 1945. It was the successor of the Permanent Court of International Justice created by the League of Nations.

A majority of U.N. members favored giving the Court compulsory jurisdiction in international disputes, but the United States and the Soviet Union opposed this. Hence, the acceptance of the Court's right to adjudicate anything was made "optional."

The Court cannot arbitrate between international contestants unless all parties voluntarily accept such arbitration. Of the 85 countries party to the Court's Statute 39, including the United States, accept the Court's compulsory jurisdiction in foreign—not domestic—disputes.

But, in 1946, the U.S. Senate adopted the Connally amendment—which, simply, would leave the United States, not the Court, to decide whether an issue was "domestic" or "International."

This amendment clearly negates American professions of dedication to international legal procedures. It has caused several other nations in turn to water down the Court's authority in deciding whether a dispute could be handled by it.

President Eisenhower, in his state of the Union message last year, called for a reexamination of the whole question, urging that "the rule of law may replace the rule of force in the affairs of nations."

In his most recent state of the Union message, the President stressed:

"There is pending before the Senate a resolution which would repeal our self-judging reservation. I support that resolution and urge its prompt passage. If this is done, I intend to urge similar acceptance of the Court's jurisdiction by every member of the United Nations. * * *

The President might have been thinking of the four lawsuits the United States has filed against the Soviet Union to recover damages for the shooting down of American planes. Or he may have reflected on similar suits we brought against Hungary and Czechoslovakia.

The International Court had no choice except to dismiss all of these cases because the accused blandly refused to accept the Court's jurisdiction.

The point is that the United States cannot honestly condemn the Communists for treating the World Court with contempt so long as it insists on its own prerogative of telling the Court what it can or can't adjudicate.

As Secretary Herter pointed out the other day, the Connally amendment hamstringing U.S. participation in the World Court is "inconsistent" with this Nation's basic philosophy. There need be no misapprehension, he said, that repeal of the amendment would threaten U.S. control over its own domestic matters since "domestic issues are clearly beyond the Court's jurisdiction."

Vice President Nixon and Attorney General Rogers have spoken in similar vein. The Vice President recently urged that all of this country's future treaties contain a clause submitting disputes of interpretation to the World Court. And the Attorney General declared that "when this Nation advocates the rule of law, we've got to make a start on that road."

By repealing the Connally amendment, the U.S. Senate can affirm America's devotion to the rules of civilized conduct—and challenge the Communist world to do likewise.

The Senate should seize the opportunity.

[From the Philadelphia Evening Bulletin, Feb. 9, 1960]

CALLS CONNALLY AMENDMENT VITAL

For the first time, I disagree with the thinking of your great cartoonist, Alexander, on the Connally amendment cartoon, "Operating Under Difficulties," February 1.

Few people understand the Connally amendment. To do so, one must know that it is a reservation added to our treaty of adherence to the U.N., and as such, a party to the statute of the International Court of Justice, consisting of 15 judges from 15 nations, which sits at The Hague. Its purpose, according to its friends, is to promote world peace through world law—a laudable purpose if it were possible.

Article 93, clause 1, U.N. Charter provides: "All members of the United Nations are ipso facto parties to the statute of the International Court of Justice."

Article 94, clause 1, provides: "Each member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party." Clause 2 provides: "If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment." This is clearly a punitive provision.

The Connally amendment simply asserts that the United States will now accept the Court's decision " * * * in matters which are essentially within the domestic jurisdiction of the United States, as determined by the United States." The last six words are the controversial ones. This simply means that the United States is a sovereign nation and that we will not permit any other nation or foreign court to meddle in our domestic affairs. It is difficult to see how any American can oppose the amendment, if he understands it.

The U.N. has 10 Communist member nations, who are therefore parties to the ICJ statute. Two of these—the U.S.S.R. and Poland—have judges on the Court. Under the Court's rules of procedure, a three-judge panel may decide any case, and such decision is binding on the entire Court, and therefore all U.N. member nations. This means that two judges—a majority of the three required—may make any decision in any case.

HERMAN A. DYKE.

[From the Philadelphia Evening Bulletin, Jan. 20, 1960]

THE PRESIDENT'S APPEAL

Settlement of international disputes under the rule of law instead of by force has an appeal today that is not purely sentimental. It could involve our very existence. Yet when the International Court of Justice was established, 15 years ago, the United States approved it with a crippling amendment.

The Connally reservation provides that when this country decides a disputed question is essentially within its domestic jurisdiction the International Court shall not pass on it. Other nations followed our example and made a similar reservation. The Court, therefore, has almost become useless.

President Eisenhower in his annual message urged Congress to repeal the Connally amendment. Tomorrow the Senate Foreign Affairs Committee will hold hearings on his appeal.

The reservation was one of the dying gasps of isolationism. Some Americans became unduly excited about our independence being threatened when it was not in the least in danger. The Court has no authority back of it except the judgment of mankind.

The President has said that he would prefer to have this country lose some cases rather than have it turn its back on judicial processes.

Strengthening the International Court will not usher in an era of peace, but it will help. This country cannot afford to brand itself as a laggard in substituting law for force.

[From the Philadelphia Evening Bulletin, Sept. 4, 1958]

THE RULE OF LAW

In the light of events in Little Rock, a curious shadow falls upon the hopes that Attorney General Rogers expressed in his speech to the International Law Association on Tuesday.

Discussing the causes for the "tragically limited" role the World Court has been able to play in settling international disputes, he quite correctly ascribed its disappointing record to the insistence of many nations, including the United States, on deciding for themselves when a dispute falls within their own "domestic" jurisdiction.

He went on to voice the opinion that "the time has come" to reexamine reservations of this sort.

Here it may be suspected, in the light of Little Rock, that wishful thinking began entering into his remarks. Arkansas and Virginia are actively challenging the right of the U.S. Supreme Court to pass upon matters which they deem to fall within their own "domestic jurisdiction" as sovereign States. Other States are preparing similar challenges.

The jealousy with which some of the States guard their own "sovereign rights" against the Supreme Court is exactly matched by the determination of nations to decide when they will submit to the decisions of the World Court.

If, as he says, "the time has come" for a more general acceptance of the rule of law, it has not yet shown itself clearly in the South.

[From the Philadelphia Evening Bulletin, Dec. 21, 1959]

CRIPPLED WORLD COURT

One body of the United Nations fails to function. It is the World Court established by the U.N. Charter. In nearly 15 years of its existence it has acted in less than a dozen cases.

This is partly the fault of the United States. When our Senate in 1946 ratified the Charter of the United Nations it tacked on a reservation declaring that

no international case involving the United States could be taken before the World Court without our consent. That made us, instead of the Court, the judge of what cases it could hear. Other nations followed us in making a like reservation.

President Eisenhower, before he left on his trip in the cause of peace, announced he would appeal to the Senate to strike out the reservation. This he had done in his annual message in January; but it was appropriate at the outset of his voyage for peace that he should again express his determination.

The World Court would not have any more power to enforce its decisions than has the United Nations as a whole. But as a court it could speak with judicial impartiality on the issue before it. That fact would give a standing to its verdict not now possessed by a political body such as the U.N. General Assembly.

Small as the step might be, the repeal of the reservation would be a move toward the rule of law instead of force.

[From the Pittsburgh Post-Gazette, Feb. 1, 1960]

STRENGTHEN WORLD COURT

Eight words prevent this country from doing the kind of job it should in encouraging a rule of law in world affairs.

The words appear in the reservation that the Senate made when it agreed in 1946 on having the United States take part in the World Court. The Senate stipulated then that the Court could have no say on "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America."

Those in italics are the eight words. They are the heart of what is called our self-judging reservation.

The administration and a lot of sensible lawmakers and citizens want to get rid of those words. The compulsory jurisdiction of the Court is limited, by its own statute, to international legal disputes. The Court itself is supposed to have final say on whether it has jurisdiction in a particular case. The Court is an organ of the U.N.; and the U.N., by its charter, is not authorized "to intervene in matters which are essentially within the domestic jurisdiction of any State." The worst that could happen if the United States wanted to defy a Court decision would be for the matter to go to the U.N. Security Council, where the United States has a veto.

As a practical matter, the self-judging reservation that qualifies our membership in the World Court has done and can do a lot of mischief. It has encouraged some nations to make a similar reservation. It could boomerang on us if we were to take a legitimate dispute to the Court, because, under a reciprocal gimmick, any other nation involved in litigation with us could claim the same right of whether to allow jurisdiction to the Court.

The self-judging reservation weakens U.S. pleas for a world order based on law. How can we lead others in such a matter when we ourselves lag? Moreover, if there is any nation that should be striving to strengthen the World Court and thus, for example, the worth of international contracts, it is the United States, which has such farflung investments and treaty arrangements.

In his state of the Union message to Congress this year, President Eisenhower renewed a plea for replacing force with a rule of law among nations. "There is pending before the Senate," he said with regard to the World Court, "a resolution which would repeal our present self-judging reservation. I support that resolution and urge its prompt passage."

So should we all.

[From the Philadelphia Inquirer, Feb. 1, 1960]

THE WORLD COURT RESERVATION

To remove a misconception that the Eisenhower administration wasn't enthusiastic about it, two members of the President's Cabinet urged favorable Senate action recently on repeal of a limiting provision attached to U.S. membership in the International Court of Justice.

They were Secretary of State Christian Herter and Attorney General William P. Rogers. They told the Senate Foreign Relations Committee that the administration fully supports the repeal measure. It would remove a reservation to court membership passed in 1946 under the sponsorship of the late Senator Tom Connally. The reservation prescribes that the United States may determine

whether a dispute coming before the court is essentially within its domestic jurisdiction and hence not subject to adjudication by the World Court.

In his State of the Union message President Eisenhower appealed for elimination of this restriction. Secretary Herter and Mr. Rogers discounted any likelihood the World Court would assert jurisdiction over the domestic affairs of this country.

Mr. Herter put the main argument very well with the statement to the Senate group that the reservation was "inconsistent with the deeply rooted conviction that no one should be a judge of his own case."

The repeal will be fought by extreme right wing elements, is already under attack from them. It is up to the Senate, where a two-thirds vote would be required to settle the issue and it is necessary to determine if the prestige and usefulness of the World Court is to be increased by us, or its value to the cause of world peace and order is to continue to be impaired.

[From the York Gazette and Daily, Feb. 5, 1960]

WORLD LAW

One of the little-noticed features of President Eisenhower's state of the Union message last month was his reference to the so-called Connally amendment.

This was the condition the U.S. Senate in 1946 tacked onto its approval of U.S. participation in a World Court. The Senate thereby all but nullified its approval. For the Connally amendment said in effect that the United States would abide by all referrals to and decisions by the World Court except in such cases where we did not think it was the World Court's business.

The intent of the Connally amendment—so named for the late Senator who was postwar chairman of the Foreign Relations Committee—was to set up a U.S. veto power over the World Court. And that is what it did. The Senate committed the United States to the Court in one breath and took back the commitment in the next.

A good many persons said at the time there was no sense to this. The record bears them out. The World Court has been mostly inoperative and entirely ineffective. It has decided about a dozen cases, all minor, in almost 14 years. The contribution it might have made to the development of a code of enforceable international law has been negligible.

Last November, Senator Hubert Humphrey addressed a note to President Eisenhower, pointing out that the Connally amendment was a major barrier to world understanding and to world peace supported by law. He advocated its removal. The President in carefully chosen words agreed. He followed up his comments to Senator Humphrey with a suggestion in the state of the Union message that it would be advisable to reconsider the Connally amendment.

A resolution to this effect has been introduced in the Senate and hearings have been held by the Foreign Relations Committee. We sincerely hope the resolution succeeds. The world has long since passed the stage when one nation can set itself up as a law unto itself.

National sovereignty is still very much a meaningful phrase in some important matters. But as regards others—as one can easily see in the present negotiations on permanent cessation of nuclear weapons testing—it does not apply. The discoveries of science have overridden national boundaries; nations must solve together the problems science has raised. Let us trust that repeal of the Connally amendment will result from the resolution that is now before the committee Mr. Connally used to head.

[From the Philadelphia Inquirer, Feb. 25, 1960]

WORLD COURT RESERVATION

A series of heated arguments for and against broader participation by the United States in the International Court at The Hague erupted the other day in the house of delegates of the American Bar Association, meeting at Chicago.

The outcome was that an attempt to repeal a long-standing ABA position against the Connally amendment, restricting submission of questions affecting this country to The Hague tribunal, was blocked, but by a narrow margin—100 to 93.

During the discussion John D. Randall, president of the ABA, announced he had been "officially assured" that the Connally reservation will not come up for action in the Senate this year. If that is the case the prospect of a long delay in dealing with the issue is regrettable.

It has been pointed out repeatedly that the Connally reservation, giving to the United States the right to decide what disputes with other countries are "domestic" and therefore out of The Hague court's jurisdiction, not only limits the Court but largely nullifies its activities.

The American attitude had the damaging result that other nations adhering to the Court adopted restrictions similar to our own. The Eisenhower administration has urged elimination of the Connally restriction. To make the Court the valuable instrument it could be, action to remove the Connally reservation should not be delayed.

WASHINGTON, D.C., February 26, 1960.

Hon. J.W. FULBRIGHT,
Chairman, Committee on Foreign Relations,
U.S. Senate, Washington, D.C.

DEAR SENATOR FULBRIGHT: I am a junior majoring in government at Beloit College, Beloit, Wis. I am in Washington for the semester on a special program my school has with some 80 other colleges and universities called the Washington semester program. It is coordinated with the American University here. In connection with the program I am preparing a project paper on "United States Reservations to Acceptance of the Compulsory Jurisdiction of the International Court of Justice." It was for that reason that I attended the February 17 hearing on Senate Resolution 94. I am writing as a result of that hearing.

It seemed to me there was an unfair and unrealistic impression created by the testimony of certain witnesses regarding the composition and legal background of the judges of the Court, upon which background cases were decided. With the aim of clearing up any misconceptions regarding the impartiality and similarity of background of the judges of the Court, I hereby request the following information compiled by myself with the help of the international organizations division and European law section of the Library of Congress be inserted in the printed record of the hearing. I hope this factual information will allay any fears regarding the caliber and competence of the judges and the legal background which forms the basis for their decisions.

Respectfully yours,

ROBERT COPAKEN.

The International Court of Justice

Judge	Country of nationality	Legal background
Helge Klaestad, president ¹	Norway.....	University of Oslo, doctor juris.
Sir Muhammad Zafrulla Khan, vice-president, ²	Pakistan.....	Government College, Lahore; King's College, London, and Lincoln's Inn, University of Salvador and Guatemala.
José Gustavo Guerrero ³ (died Oct. 25, 1959). Jules Basdevant ⁴	El Salvador.....	University of Salvador and Guatemala.
Green Hackworth ⁵	France.....	College d'Autun and University of Paris.
Böhdan Winarski ⁶	United States.....	Valparaiso, Georgetown, and George Washington University.
Enrique C. Armand-Ugon ⁷	Poland.....	Warsaw, Cracow, Paris, and Heidelberg.
Abdel Hamid Badawi ⁸	Uruguay.....	University of Montevideo.
Fedor Ivanovich Kojevnikov ⁹	United Arab Republic.....	University of Grenoble, doctor honoris causa; Fouad I, Cairo, and University of Southern California.
Sir Hersch Lauterpacht ¹⁰	U.S.S.R.	University of Moscow, doctor juris.
Lucio M. Moreno Quintana ¹¹	United Kingdom.....	Lvov, Vienna, London.
Roberto Cordova ¹²	Argentina.....	University of Buenos Aires, doctor of juris- prudence.
V. K. Wellington Koo ¹³	Mexico.....	National Preparatory School, National University of Mexico, University of Texas.
Jean Spiropoulos ¹⁴	China.....	Columbia University, Hon. LL.D. and honoris causa Columbia, Yale, St. Johns, Aberdeen, Birmingham, Man- chester, L.H.D. Rollins.
Sir Percy Spender ¹⁵	Greece.....	Zurich, Leipzig.
	Australia.....	Sydney University.

¹ "Yearbook", International Court of Justice, 1946-47, The Hague, p. 49.

² "The International Year Book and Statesman's Who's Who," 7th ed., 1959, London: Burke's Peerage Ltd., 1959.

³ "The International Who's Who," 23d ed., 1959, London: Europa Press, 1959.

⁴ "Annuaire" 1953-1954, Court Internationale de Justice, Leyden: A. W. Sijthoff, 1954, p. 12.

⁵ Quien es Quien en la Argentina," 7th ed., Buenos Aires, 1959.

⁶ "Recueil des Cours, Academie de Droit Internationale," 1929 vol. V (30), Paris: Hachette, 1931, p. 193.

FEBRUARY 26, 1960.

Hon. J. W. FULBRIGHT,
Chairman, Committee on Foreign Relations,
Washington, D.C.

MY DEAR SENATOR FULBRIGHT: The only hope for peace in the world is through the medium of an international court where all international disputes will be settled according to rules of law and principles of justice.

The charter of the United Nations has provided for an International Court of Justice, but the United States, to a great extent, has crippled its effectiveness. In 1946 the Senate adopted what has become known as the Connally amendment which permits the United States to determine for itself whether it will permit the Court to sit in cases involving "domestic jurisdiction."

Under this proviso, the United States may refuse to answer in Court in any international dispute by simply asserting that it involves "domestic jurisdiction." Of course, when we do this, the other nations have the right to do the same. As a consequence, the International Court of Justice is a big, beautiful hall peopled by 15 robed justices who have practically nothing to do. They stare at the ceiling while the building itself reverberates not only from the cannon shot of bloody war but from nuclear detonations preparing the world for an all-annihilating explosion.

Is this not the most absurd situation that can be imagined?

If the International Court of Justice had had the jurisdiction it should have, the Korean war, which resulted in the death of 30,000 American boys, would have been averted. If the International Court of Justice could have functioned as a true court, other sanguinary conflicts which followed World War II and brought mourning to countless homes throughout the world could have been prevented.

If the United States declares that we will be subject to law as we demand that other states shall, no other nation can take refuge behind a camouflaged stand of "domestic jurisdiction" and perpetrate international brigandage.

Your committee is now considering Senate Resolution No. 94 which would repeal the Connally amendment. I respectfully submit that Senate Resolution 94 should pass and the Connally amendment should be repealed.

Those who oppose Senate Resolution 94 fear that since we have only 1 judge among the 15 who comprise the International Court, the other judges might conspire against us. This is a child's argument. On that basis, all nations in the United Nations could conspire against us, if, jettisoning every principle of decency, they wished.

If the fear thus expressed had shaken the founders of our Nation, there would never have been a Constitution of the United States because there were those who argued that if the individual States consented to give up some of their sovereignty to a Federal Government, a number of States could combine to demolish a single State.

The Connally amendment has placed the United States in a very inconsistent position. Article 36 of the Statute of the International Court of Justice declares: "In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court."

Yet, after making this commitment, we say that we will let the Court determine jurisdiction if it pleases us that it have jurisdiction, but if we are not satisfied with its decision about jurisdiction we will not be bound by it. This is not law, this is resistance to law; this is not order, it is disorder; this is not equity, it is inequity.

Despite many signs to the contrary, the human race is basically sound and just. I sat on the International Court in Nuremberg. In that tribunal we were called upon to interpret the law of many nations and I found that the underlying principles of justice were more or less the same in all systems of jurisprudence.

What the world needs is a tribunal which commands respect and whose decisions will be enforced. Once we have that tribunal, there will be no more wars and mankind will come into the true millenium of happiness. But the International Court of Justice cannot be that tribunal if the United States refuses to make itself subject to its jurisdiction.

The United States has undertaken the moral leadership of the world. We fought World War II for no territorial gain and received none. This Nation laid on the altar of freedom and justice the lives of thousands of American lads. That sacred sacrifice was made for but one object and that is peace

and true understanding between man and man and between nation and nation. That sacrifice, however, will go for naught, if we do not, with every moral persuasion at our command, bring about the substitution of the courthouse for the battlefield.

It is my sincere belief that there is nothing before the Senate today more important than the passage of Senate Resolution 94.

I have been a judge for 28 years. Leaving aside devotion to one's chosen work, I believe the time has come to turn over to the judiciary the safeguarding of the destiny of mankind. Without intending any disrespect to the noble endeavors made by the diplomats and military leaders in history to achieve the supreme desideratum of the peoples of the world, I would say: Give the judges a chance to bring peace and human understanding to a war-weary world.

Respectfully,

MICHAEL A. MUSMANNO,
Justice, Supreme Court of Pennsylvania.

STATEMENT OF WILLIAM LEIGHTON, NEW YORK CITY, N.Y.

Mr. Chairman and members of the Committee on Foreign Relations, my name is William Leighton and I live in New York City. As an applicant for intervention in the *Interhandel* case now pending before the Federal courts in the District of Columbia, I am particularly interested in the effect which the repeal of the Connally reservation would have on the outcome of that case. That is the domestic aspect of a case involving upwards of \$150 million and now almost 12 years old.

The international aspect of the case has been before the International Court of Justice and its judgment of March 21, 1959 (hereinafter referred to as the "judgment") is hereby offered as an appendix to this statement and made part hereof.¹ It is fair to state that the true reason for the administration's support of Senate Resolution 94 is its desire to remove the mandatory statutory defense in the International Court litigation, the defense required by the Connally reservation. It is also fair to point out that repeal would be of immediate and primary benefit to those speculators seeking to buy *Interhandel's* alleged assets in the United States at a fraction of their true value. With the Connally reservation on the statute books, this end cannot be achieved.

Long before Senate Resolution 94 was referred to this committee, I have raised the questions pertaining to the Connally reservation in my copyrighted petition for certiorari to the U.S. Supreme Court. The Justice Department, through its Office of Alien Property, has opposed me at each step and turn because it is aware that if such questions are judicially decided, it would face exposure for its deliberate mishandling of the *Interhandel* case. One glaring instance of such capriciousness can be gaged from the fact that the judgment was not even transmitted by the administration to this committee. Nor was or is this judgment filed in the Federal courts even though in explicit terms it requires that its directives be followed by such courts. The Justice Department has opposed as "wholly irrelevant" my motion for leave to file this judgment in the Federal court of appeals where two cases pertaining to the *Interhandel* complex of matters are now pending.

The pertinency of the judgment to Senate Resolution 94 can be seen from the preamble thereto which in terms states: * * * Domestic jurisdiction of United States and scope of reservation (b) of its declaration of acceptance of compulsory jurisdiction of Court * * *.

1. *The domestic jurisdiction of the United States* clearly encompasses all matters covered by the Constitution and the exercise of that jurisdiction is expressly stated by article III section 1 to be the function of the Supreme Court and of courts ordained or established by the Congress; i.e., the Federal courts. The International Court of Justice is not a "court ordained or established by the Congress." The Court was established pursuant to a treaty, the United Nations Charter, duly assented to by the Senate but not by the Congress as a whole.

Thus, the narrow question is whether the International Court has the same status as other courts ordained and established by the Congress pursuant to article III section 1. Had the Constitution contemplated that courts can be

¹ The 125-page judgment referred to is on file with the committee.

"ordained or established" by treaty, it would not have limited the judicial power of the United States to courts created by the Congress.

By this token, the Congress cannot transfer the judicial power of the United States to a court not created or ordained by it. Therefore, the Connally reservation merely affirms in explicit terms the constitutional requirement.

2. *The principle of article III is that the Constitution is to be exclusively expounded by the Federal courts.*—Much has been said about the effect of the reservation on claims that the United States may file in the International Court and the possibility that such claims may be barred by the reciprocal operation of the reservation. This view has been urged by the proponents of repeal who seem to assume that each and every claim, if brought by the United States, is automatically within the jurisdiction of the International Court.

The short answer to such arguments is that the United States as a party plaintiff would have standing to sue in the International Court only if denied justice by the courts of the defendant state.

This is the rule of the "exhaustion of local remedies," the one rule that saved the day for the United States in the *Interhandel* case. As the judgment expressly states: "the rule that local remedies must be exhausted before international proceedings may be instituted is a well-established rule of customary international law; the rule has been generally observed in cases in which a state has adopted the cause of its national whose rights are claimed to have been disregarded in another state in violation of international law" (p. 27).

Since the Connally reservation expressly confers upon the United States exclusive jurisdiction to determine what constitutes a matter coming within its domestic jurisdiction, the question next to be reached is how such determination should be made in a justiciable case or controversy. Article III section 2 would seem to supply the answer. That section clearly vests the Federal courts with jurisdiction to decide cases or controversies arising under treaties and laws of the United States. Pursuant to this prerogative and as part of the judicial code, Congress has enacted section 1350 of title 28, United States Code, which confers upon the Federal courts original jurisdiction of any action brought by any alien alleging violation of a treaty to which the United States is a party or of the law of nations.

Thus, since the United States or its citizens would enter an appearance as aliens in the courts of any foreign state, a denial of justice by such courts would automatically entitle the United States to bring suit in the International Court on its own or on behalf of its citizens. This is so because the Federal courts are open to the citizens of such state if they have a cause of action similar to that alleged by the United States or its citizens. Thus if the Connally reservation were reciprocally invoked by some defendant foreign state in the International Court the United States could require such state to show that access to its courts was not denied to it or its citizens and that justice was dispensed by its local courts on a par with 28 U.S.C. 1350.

3. *The validity of any treaty to which the United States is said to be a party is a matter within the domestic jurisdiction of the United States.*—The Federal courts never decide a question of constitutional law unless the pleadings require it. This is especially true of cases involving treaties and executive agreements which may or may not be binding upon the United States. Before any claim is entertained by the Federal courts under any such treaty or executive agreement, an inquiry is made into its validity. If found "present, valid, and effective," *Iwanecio v. Artukovic*, 211 F. 2d 565, 575, cert. denied, 348 U.S. 889, the courts will proceed to consider granting the relief sought. The question of the validity of the treaty is one of considerable moment because the courts will not assume the lack of validity unless alleged and then will cautiously proceed by way of ascertaining the need for making a pronouncement either way. Thus, in *Wilson v. Girard*, 354 U.S. 524, the Supreme Court exhaustively searched a treaty between the United States and Japan for constitutional defects that may invalidate it. The court found none and the treaty was determined to be valid.

If the Connally reservation were repealed the task of deciding on the validity of a treaty or executive agreement pursuant to which the United States is being sued in the International Court would devolve upon that Court rather than upon the Federal courts. In the *Interhandel* case, through the improvident admission of the then legal adviser to the State Department, the United States was declared by the International Court to be bound by a "treaty" known as the Washington accord of May 25, 1946. This so-called treaty was never consented to by the Senate, was never proclaimed by the President, was never pub-

lished in the Statutes at Large or the current U.S.T. series and was never passed upon by the Federal courts in the context of the case. This is a treaty which purports to modify to a considerable extent the Trading With the Enemy Act which the Congress had enacted pursuant to its war power.

4. *Without the Connally reservation, the United States would be liable for unlimited damages caused by the inept handling of the Interhandel case.*—Willful denial of justice may be actionable for damages in the International Court. Since that Court has found and declared the United States to be bound by a treaty, the question arises whether Interhandel, the alleged Swiss national, is being denied the benefits of that treaty by the Federal courts. It is certainly amazing that almost 1 year after the judgment had issued, Interhandel still fails to seek any relief under its terms in the Federal courts. It is even more amazing that the Justice Department should consider the treaty and the judgment as "wholly irrelevant" to the Federal court litigation.

There is only one possible answer. The Justice Department appears to be wary of facing the Federal courts in the matter of the treaty and by way of escape, it seeks to have the Senate repeal the Connally reservation. When and if done, this would give the Swiss Government the opportunity to renew its litigation before the International Court and, without the Connally reservation, the International Court would acquire unchallenged jurisdiction to decide that the treaty has modified the Trading With the Enemy Act.

Achieving this result is worth \$150 million to Interhandel. Therefore when the Senate is urged to repeal the Connally reservation, it is well to remind it that repeal is urged upon it because all other means of forcing the Government to lose the case are failing and that the investors in Interhandel stock are getting impatient at the lack of immediate tangible results.

5. *Conclusion.*—The Committee on Foreign Relations should appoint a subcommittee to investigate and report to the Senate the effect which the repeal of the Connally reservation would have on the International Court litigation of the *Interhandel* case.

WEST ENGLEWOOD, N.J.

Senator J. W. FULBRIGHT,
Chairman, Senate Foreign Relations Committee, Senate Office Building, Washington, D.C.

DEAR SENATOR FULBRIGHT: The New Jersey Coalition, Inc., respectfully requests that the following resolution and statement be made a part of the record re hearings on S. Res. 94, introduced by Senator Hubert Humphrey, March 24, 1950.

"RESOLUTION SUPPORTING RETENTION OF CONNALLY AMENDMENT (RESERVATION)

"Whereas it has been suggested in high places that the United States may sponsor widened authority for the International Court of Justice, known as the World Court; and

"Whereas the World Court is an agency of the United Nations and the United States has accepted the jurisdiction of the World Court in international affairs, but has refused to permit it to say what could or could not be done here in the United States; and

"Whereas when the U.S. Senate ratified the United Nation's Charter and the World Court, it was very specific about this matter, saying that its approval would not apply to "disputes with regard to matters which are essentially within the domestic jurisdiction of the United States of America as determined by the United States of America"; and

"Whereas the jurisdiction of the World Court without the Connally amendment (reservation) would subject the United States to foreign control and the beginning of world government; Therefore be it

"Resolved, That the New Jersey Coalition, Inc., opposes any and all attempts to repeal the Connally amendment (reservation) which limits the jurisdiction of the World Court to purely international affairs and guarantees self-determination to the citizens of the United States and the maintenance of our sovereignty."

"STATEMENT OF THE NEW JERSEY COALITION, INC.

"Let us not be deceived by the Humphrey resolution, Senate Resolution 94. It makes but one significant change in existing legislation regarding the World Court. The Morse World Court resolution of 1946 has already provided for

United States participation in activities of this supranational judicial body. But they made one important reservation—we would not accept the compulsory jurisdiction of the International Court in matters essentially within our domestic jurisdiction 'as determined by the United States.'

"These last six words known as the Connally amendment (reservation), Senator Humphrey now wishes to delete. This is the crux of his resolution Senate Resolution 94.

"Endorsement of the World Court for what it is worth we already have. Through the years the United States has allowed many disputes that concerned us, on an international basis, to be heard in the World Court thereby proving that we have not abused the Connally amendment (reservation) 'as determined by the United States.'

"Senator Humphrey now wants us to go a giant step further and invite this so-called judicial body to seize upon matters for adjudication which we consider our own private national concern.

"What is this International Court to which Senator Humphrey wants us completely to bare our necks? It is a body of 15 judges, 14 non-Americans, sitting in foreign lands. Its concepts of law and rights and duties of nations and individuals under that law is not and cannot be ours—because many of the countries whose nationals sit in its Councils believe that law is manmade expedient and that the state and needs of the hour are superior to objective law. Since its inception some 13 years ago the court has settled less than one case a year. The most important international issues have, by common consent or mutual agreement, bypassed it; the Berlin crisis and Suez Canal crisis are such examples. Its most ardent advocates have, with great insight, dubbed it the Empty Court.

"Therefore, we respectfully request your rejection of Senate Resolution 94 because of the following considerations:

"Since a prominent representative of our own State Department, in 1950, said there is now no difference between domestic and foreign issues we could expect that the members of the International Court, composed of, with one exception, foreign nationals, would consider many subjects suitable for International Court consideration. These could range from immigration to education, civil rights, foreign aid, and even control of the Panama Canal.

"Many cases, truly international in character, which might properly have been brought before the World Court—Berlin crisis and Suez Canal crisis—were never submitted to that court for settlement, thereby exploding the theory that our Connally reservation was responsible for other countries not submitting cases to the World Court.

"Since some of the judges on the World Court are from Communist or Communist controlled countries it is a conjectures as to whose law would be the law. Law to Communists means something very different than it does to us. To them laws are essentially the means whereby those in power suppress or destroy their enemies.

"Since law cannot be formulated on a national or international basis without a common basis of morality and common standards of justice, there can be no general agreement on law in the United Nations or World Law in the foreseeable future. The conflicts are political not judicial. Just how much Hungarian law was permitted by Russian forces in Hungary, or Tibetan law in Tibet by Red China?

"If it is not the intent of the World Court to meddle into our domestic affairs, why is there this drive to do away with the protection of the Connally amendment (reservation)?

"We ask your rejection of Senate Resolution 94."

MYRA C. HACKER,
Mrs. Ralph E. Hacker,
Vice President, New Jersey Coalition, Inc.

STATEMENT BY MRS. RUTH ANDERSON FREDDE, PRESIDENT, DALLAS FEDERATION OF WOMEN'S CLUBS, FEBRUARY 17, 1960

Mr. Chairman and gentlemen of the committee, when I wrote to each of you a few days ago, I had no idea of calling on you in person. You are most kind to allow me to come and present the views of the Dallas Federation of Women's Clubs, which I represent. We have 130 organizations with approximately 25,000 members. The Dallas federation was founded and has persisted in its inimitable position since 1898. It is highly representative of opinion in that area.

What I have to say to you today has to do with this Bill of Rights—this Bill of Rights—the rock foundation on which rests the beginning, the building through hardship and resolute struggle and the sustaining of these United States of America—your and my Bill of Rights—the guarantee of freedom for every man, woman, and child living under our flag.

The Connally reservation must be retained because in six words, "as determined by the United States," it reserves the right to determine which of our cases shall be taken out of our own courts and referred to the World Court, from which there is no appeal. To us it is really important and significant that the World Court is an agent of United Nations with all of U.N.'s implications, complexities, and hazards.

Back to our Bill of Rights, let us think what we have now and what we would have if we made a swap of our Bill of Rights for the United Nations' Charter and covenants. It's certain we can't have both—for, one setup cancels out the other.

It says here in large print, "Religious Freedom"—Would we have that? Not a chance, gentlemen; United Nations acknowledges no deity. And freedom to manifest one's religion is subject to stated limitations.

As to "Freedom of Speech," under our Constitution we have the right of free speech and free assembly. No court in America may deny us these rights. But the World Court most certainly can because it operates under the United Nations' "Covenant of Human Rights."

Next, the right of private property ownership is clearly spelled out in our Bill of Rights but flagrantly and conspicuously absent from documents of U.N. The General Assembly and Security Council of United Nations select 15 judges to represent its 82 member nations. Prescribed rotation of representation would give us 1 judge out of 15 about 18 percent of the time; the remaining 82 percent of the time could find us without representation.

At the rapid rate of taking nations in, our representation could be reduced to 10 percent or less. And it is a matter of record that the 10 nations in the Communist bloc, although they may have 2 judges on the World Court, do not and will not accept its jurisdiction.

My question, gentlemen, is, Why has anyone been permitted to attack our fundamental concept of freedom? Why should recommendation ever have been entertained whereby our citizens are robbed of their Americansim and placed at the mercy of uncurbed internationalism? Why was this ever done, when it is basic reasoning that it is disastrous to submit our own problems to judges of countries whose ideas of justice and political philosophy are contrary to those of the United States?

Gentlemen, please listen to me, such a plan violates, desecrates, and contradicts the whole heart of family life on which America has been built and upon which it thrives. One loves one's neighbors but you don't throw the key to your home to people next door, down the block or across town. Our forefathers endured tortuous and untold dangers getting away from, and leaving behind them, the distraughtness of other lands in the establishment of these precious United States. Surely we are not bent on completing the cycle from chaos to chaos.

This theory that the World Court should decide what issues are domestic and what are international is not new. It was debated in the old League of Nations. Its inclusion was the reason our Senate rejected the League. We're dealing with theory versus practical experience and reason and of course we are dealing with the age-old conflict of class.

Further, without the protection of the Connally amendment, the U.N. World Court might decide that any issue is international as far as the United States is concerned. For example: That our immigration laws are international, and that countless immigrants from all over the world should be accepted without question in the United States. Another example: That our import and export laws are international. This would subject our labor to Soviet rule and leave them no protection against foreign products at slave-labor pay. The combination of labor and industry and a strong middle class is the cause and the effect of this country enjoying the highest living standards of any nation on earth.

The Statute of the International Court designates labor cases as a category that may be tried by chambers of as few as three judges. These may be from countries who know nothing of the achievements and standards of labor in our Nation. To remove the Connally reservation would leave labor, industry, and our strong middle class wide open to every possible termite of destruction.

As to its being within our discretion to terminate acceptance of the Court's jurisdiction on 6 months' notice—after the horse is out, it's useless to close the gate.

We Americans love our country and our Constitution and we want our Government kept just as it is.

I do not envy you the responsibility which is placed on each of your shoulders but as my last word, I call to mind, our constant reminder which we hold in our hands every day of our life—a silver piece of United States of America currency—with its inscription "In God We Trust." Go, sit in world courts, in world conferences, in world committees—and exercise your best and clearest thinking with which you are so endowed and gifted for administration of great affairs—you American men who tower above all men of all nations, but, keep our key of home decision in your own pocket—In God We Trust—and we place our trust in you, knowing that you will keep our American sovereignty, as it was in the beginning, is now and ever shall be, God willing.

Thank you so much.

MEMORANDUM BY R. R. BAXTER, PROFESSOR OF LAW, HARVARD LAW SCHOOL

Actions concerning the Panama Canal and the Panama Canal Zone in the International Court of Justice could arise out of either the relationships of the United States with the Republic of Panama or disputes concerning passage through the canal by foreign ships. These two categories of possible litigation will be discussed in turn.

The source of the rights of the United States in the Panama Canal Zone is the Hay and Bunau-Varilla Treaty of 1903 (33 Stat. 2234, T.S. No. 431), by article II of which the Republic of Panama granted to the United States in perpetuity "the use, occupation, and control of a zone of land and land under water for the construction, maintenance, operation, sanitation and protection" of the Panama Canal. Article III of the treaty grants to the United States "all the rights, power and authority within the zone mentioned and described in article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said article II which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority."

A number of other agreements have subsequently been concluded for the purpose of regulating the relationships of the United States and Panama with respect to the Canal Zone. The most important of these are the General Treaty of Friendship and Cooperation of 1936 (53 Stat. 1807, T.S. No. 945) and the Treaty of Mutual Understanding and Cooperation of 1955 (6 U.S.T. 2273, T.I.A.S. No. 3297), which have modified in some particulars the Hay and Bunau-Varilla Treaty. These agreements regulate such matters as the operation of commissaries, the employment of Panamanian labor, customs exemptions, sales to ships in transit, boundaries, claims, and the annual payments to Panama. The basic terms of the grant by the Republic of Panama, as quoted above, have, however, remained unchanged.

To the extent that the reciprocal rights and duties of the United States and Panama stem from treaties, disputes which might be taken before the International Court of Justice would be ones of treaty interpretation. Other matters, not currently dealt with by treaty or any other form of international agreement, rest within the sole discretion of the United States. With insubstantial exceptions, the government and defense of the Panama Canal Zone are not regulated by agreements with the Republic of Panama. In light of this fact and of the sweeping grant of power made by the Hay and Bunau-Varilla Treaty, it is improbable that the Republic of Panama could present to the Court a persuasive case for limiting the authority of the United States over the canal and the zone. This is not to say that Panama, which has accepted the jurisdiction of the International Court without qualification, might not attempt to do so. That country has frequently maintained that the language of the treaty of 1903 granting a zone to the United States for the "construction, maintenance, operation, sanitation and protection" of the canal constitutes a limitation on the rights of the United States and that certain activities within the zone, not being necessary to the operation of the canal, were therefore unlawful.

The other broad category of disputes which might be presented to the International Court would be ones relating to the right of free passage through the canal. Basically, the canal is required by the Hay-Pauncefote Treaty of 1901 with Great Britain (32 Stat. 1903, T.S. No. 401) and by the Hay and Bunau-Varilla Treaty to be "free and open to the vessels of commerce and of war of all nations * * *, on terms of entire equality." It is quite clear that under these two treaties, Great Britain and Panama can complain if vessels flying their flag or ships flying foreign flags are denied transit under the conditions specified in the treaty of 1901 with Great Britain, as incorporated by reference in the treaty of 1903 with Panama. Whether third nations, i.e., states other than Great Britain and Panama, may claim directly, in their own right, the privilege of free passage granted by the treaties has never been authoritatively decided. It is not without interest that the United States is not a party to the Convention of Constantinople of 1888, regulating freedom of passage through the Suez Canal, and would therefore be hard put to claim an enforceable right to free passage through that canal if it were to deny that third parties to the conventions governing the Panama Canal had such a right.

Practice makes it clear that the United States may deny or restrict passage through the canal to the extent necessary to protect either its defense or its neutrality in time of war or of armed conflict. These controls have been sufficiently widely accepted and find enough support in the regime of the other major interoceanic canals of Suez and Kiel that they may be considered to have passed into customary international law. As is frequently true of matters governed by a treaty cast in general terms, an accretion of customary law grows up about the words of the agreement. A nation asserting a denial of freedom of passage by the United States would thus be compelled to invoke the treaties of 1901 and of 1903, as further spelled out by state practice. It would rest with the International Court to determine whether the complaining state had standing under the treaties and, if so, whether the United States had infringed upon its rights. This question would not be one "essentially within the domestic jurisdiction of the United States of America."

If it were desired to exclude disputes relating to the Panama Canal Zone or to the Panama Canal from the compulsory jurisdiction of the International Court of Justice, this exclusion could be accomplished by excepting from the jurisdiction of the Court cases of this nature, so identified, or by an exception cast in such general language as the following:

"Disputes relating to territorial title or to any land or maritime area over which the United States of America by custom, grant, or lease exercises rights of use, occupation, and control."

However, in my view it would be neither necessary nor desirable to include a reservation of this sort in an instrument accepting the compulsory jurisdiction of the International Court. Disputes about the rights of the United States in the canal and in the zone, with Panama or with third states, can hardly be described as being essentially within the domestic jurisdiction of the United States, whether or not the "self-judging" reservation is preserved. The rights of the United States are so firmly grounded in treaty and in customary international law that there should be no apprehension about submitting challenges to them to impartial determination by the International Court of Justice.

WASHINGTON, D.C., February 25, 1960.

Re U.S. acceptance of the obligatory jurisdiction of the International Court of Justice (S. Res. 94).

Senator J. W. FULBRIGHT,
Foreign Relations Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR FULBRIGHT: Possibly the greatest forward step out of the jungle of unbridled force toward civilized survival is for parties to disputes to go to court when they are unable to settle by peaceful negotiation.

The United States in 1946 purported to submit to the obligatory jurisdiction of the International Court of Justice. This it failed to do, because at the last moment on the floor of the Senate a reservation was inserted in the Senate resolution which provided in effect that the United States itself would determine when the Court had jurisdiction. This reservation did not have the benefit of the mature consideration of the Senate or its Committee on Foreign Relations.

While this improvised Senate reservation was limited to disputes with regard to matters which are essentially within the domestic jurisdiction, when this question is left to the sole discretion of one of the parties to a dispute to decide, the substance of compulsory jurisdiction is destroyed. The Court, not the parties, should decide if a dispute is within a nation's domestic jurisdiction or is a question of international law in which the Court has jurisdiction.

In the light of the foregoing the United States of America at this dangerous interval in a jet-atomic age requires the leadership of its Government—at this moment particularly of the Senate. Critical intelligence demands that the Senate reservation providing in effect that the United States is to determine the Court's jurisdiction be withdrawn. It is contrary to established principles of justice that a party to a case in court should itself decide if the court has jurisdiction. A party to a suit cannot be judge in his own cause. Or, as the Spanish maxim goes, he cannot be judge and party.

If a good example is the best teacher, in this instance the United States has shown a failure of leadership. Some of the countries that the U.S. Government has for many years sought to have live up to the international standard of state responsibility for the protection of the life and property of foreigners, have now copied the U.S. reservation referred to above in their adherence to the obligatory jurisdiction of the International Court of Justice. The United States cannot expect other governments to support international law, if its own policy is based on the evasion of judicial settlement.

The obligatory jurisdiction of the International Court of Justice only operates where there is reciprocity. The fact that the Soviet Government has not accepted the obligatory jurisdiction of the Court leaves it in the category of uncivilized nations. Since it has not accepted such jurisdiction, of course it could not bring the United States before the International Court of Justice in a dispute with this country.

This is an unsolicited letter for the hearing record from a private citizen who served as a captain of field artillery in the U.S. Army in France during World War I, and for the past three decades has been an international lawyer and a professor in this field seeking to extend the rule of law to the international community as a substitute for mutual destruction.

Sincerely,

JAMES O. MURDOCK.

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